

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1209

AN ACT to amend the Indiana Code concerning state offices and administration.

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

SECTION 1. IC 5-11-1-9, AS AMENDED BY P.L.157-2020, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 9. (a) The state examiner, personally or through the deputy examiners, field examiners, or private examiners, shall examine all accounts and all financial affairs of every audited entity. However, an examination of an entity under this subsection shall be limited to matters relevant to the use of the public money received by the entity.

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

- (1) less than fifty percent (50%); or
- (2) subject to subsection (i), at least fifty percent (50%) but less than seven hundred fifty thousand dollars (\$750,000);

of its disbursements during the period subject to an examination from appropriations, public funds, taxes, and other sources of public expense shall be limited to matters relevant to the use of the public money received by the entity.

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

- (1) in consideration of the applicable risk based examination criteria described in and approved under section 25 of this

HEA 1209 — Concur



chapter; and

(2) based on submitted information;

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

(d) Notwithstanding any other law, the:

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

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

(3) Indiana destination development corporation established by IC 5-33-3-1 and the corporation's funds, accounts, and financial affairs shall be examined by the state board of accounts unless the examination is waived under subsection (l).

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

(1) The financial condition and resources of each audited entity.

(2) Whether the laws of the state and the uniform compliance guidelines of the state board of accounts established under section 24 of this chapter have been complied with.

(3) The methods and accuracy of the accounts and reports of the person examined.

The examinations may be made without notice.

(f) If during an examination of a state office or a body corporate and politic under this chapter the examiner encounters an inefficiency in the operation of the state office or the body corporate and politic, the examiner may comment on the inefficiency in the examiner's report.

(g) The state examiner, deputy examiners, any field examiner, or any private examiner, when engaged in making any examination or when engaged in any official duty devolved upon them by the state examiner, is entitled to do the following:

(1) Enter into any state, county, city, township, or other public



office in this state, or any entity, agency, or instrumentality, and examine any books, papers, documents, or electronically stored information for the purpose of making an examination.

(2) Have access, in the presence of the custodian or the custodian's deputy, to the cash drawers and cash in the custody of the officer.

(3) During business hours, examine the public accounts in any depository that has public funds in its custody pursuant to the laws of this state.

(h) The state examiner, deputy examiner, or any field examiner, when engaged in making any examination authorized by law, may issue subpoenas for witnesses to appear before the examiner in person or to produce books, papers, or other records (including records stored in electronic data processing systems) for inspection and examination. The state examiner, deputy examiner, or any field examiner may issue a subpoena to enforce the filing of the annual financial report. The state examiner, deputy examiner, and any field examiner may administer oaths and examine witnesses under oath orally or by interrogatories concerning the matters under investigation and examination. Under the authority of the state examiner, the oral examinations may be transcribed with the reasonable expense paid by the examined person in the same manner as the compensation of the field examiner is paid. The subpoenas shall be served by any person authorized to serve civil process from any court in this state. If a witness or officer duly subpoenaed refuses to attend, refuses to produce information required in the subpoena, or attends and refuses to be sworn or affirmed, or to testify when called upon to do so, the examiner may apply to the circuit court having jurisdiction of the witness or officer for the enforcement of attendance and answers to questions as provided by the law governing the taking of depositions or to enforce the filing of any report referred to in this subsection.

(i) The definitions in IC 20-24-1 apply throughout this subsection. Appropriations, public funds, taxes, and other sources of public money received by a nonprofit corporation as a charter school or organizer of a charter school for the purposes of a charter school may not be counted for the purpose of applying subsection (b)(2). Unless the nonprofit corporation receives other public money that would qualify the nonprofit corporation for a full examination of all accounts and financial affairs of the entity under subsection (b)(2), an examination of a charter school or organizer of a charter school must be limited to matters relevant to the use of the public money received for the charter school. This subsection does not prohibit the state examiner, personally



or through the deputy examiners, field examiners, or private examiners, from examining the accounts in which appropriations, public funds, taxes, or other sources of public money are applied that are received by a nonprofit corporation as a charter school or organizer of a charter school relating to the operation of the charter school.

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

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

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

(B) the nonprofit subsidiary corporation;

for the year;

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

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

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

(l) The state examiner may waive the examination of the Indiana destination development corporation and a nonprofit subsidiary corporation established under IC 5-33-5-14 if:

(1) an independent certified public accounting firm conducts an examination under IC 5-33-3-2(c) of:

(A) the Indiana destination development corporation and the Indiana destination development corporation's funds, accounts, and financial affairs; and

(B) the nonprofit subsidiary corporation;

for the year;

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

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



SECTION 2. IC 5-33-3-2, AS ADDED BY P.L.78-2019, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. (a) The corporation is:

- (1) a public body corporate and politic; and
- (2) an instrumentality of the state.

(b) The corporation is separate from the state. However, the exercise by the corporation of its powers is an essential governmental function.

(c) The board may engage an independent certified public accounting firm to conduct an examination of:

- (1) the corporation and the corporation's funds, accounts, and financial affairs; and**
- (2) a nonprofit subsidiary corporation established under IC 5-33-5-14.**

The examination must comply with the uniform compliance guidelines, directives, and standards established by the state board of accounts. If an independent certified public accounting firm conducts an examination, the corporation shall submit a copy of the examination report to the state board of accounts not later than the next date on which the corporation is required to file its financial reports under IC 5-11-1-4.

SECTION 3. IC 5-33-5-10, AS ADDED BY P.L.78-2019, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 10. **Except as provided in IC 5-11-1-9(l)**, the corporation, **including a nonprofit subsidiary corporation established under section 14 of this chapter**, is subject to compliance audits by the state board of accounts.

SECTION 4. IC 5-33-5-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 14. (a) **The corporation may establish a nonprofit subsidiary corporation that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code to solicit and accept private sector funding, gifts, donations, bequests, devises, and contributions.**

(b) A nonprofit subsidiary corporation established under this section:

- (1) must use money received under subsection (a) to carry out in any manner the purposes and programs under this article;**
- (2) must report to the budget committee each year concerning:**
 - (A) the use of money received under subsection (a); and**
 - (B) the balances in any accounts or funds established by the nonprofit subsidiary corporation; and**



(3) may deposit money received under subsection (a) in an account or fund that is:

**(A) administered by the nonprofit subsidiary corporation;
and**

(B) not part of the state treasury.

(c) Except as provided in IC 5-11-1-9(l), the state board of accounts shall audit a subsidiary corporation established under this section.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

HEA 1209 — Concur

