

SENATE BILL No. 338

DIGEST OF INTRODUCED BILL

Citations Affected: IC 2-5-1.1-6.3; IC 5-11-1; IC 5-11-5-1.

Synopsis: State board of accounts. Establishes an audit committee in the legislative department of state government to assure the independence of the examination process of the state board of accounts. Requires that the appointment of and any removal of the state examiner and a deputy state examiner of the state board of accounts must be approved by the audit committee. Eliminates the requirement that a state examiner and each deputy examiner have three consecutive years of active experience as a field examiner with the state board of accounts. Replaces the requirement that the deputy state examiners be of different political parties with a requirement that not more than two of the three members of the state board of accounts be members of the same political party. Provides for staggered four year terms for members of the state board of accounts. Requires the state board of accounts to use a risk based audit approach in its examinations. Requires examinations using a risk based audit approach to be conducted under a plan approved by the audit committee. Requires the report of each examination to be distributed to the audit committee.

Effective: Upon passage.

Hershman

January 14, 2014, read first time and referred to Committee on Tax and Fiscal Policy.



Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 338

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 2-5-1.1-6.3 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: **Sec. 6.3. (a) The following definitions apply**
4 **throughout this section:**
5 (1) "Audit committee" refers to the audit and financial
6 reporting subcommittee of the legislative council established
7 by subsection (b).
8 (2) "Audited entity" refers to the state, a municipality, a
9 public hospital, or another person or entity that is subject to
10 an examination by the state board of accounts under
11 IC 5-11-1 or another law. However, the term applies to an
12 entity (as defined in IC 5-11-1-16(e)) to the extent that the
13 entity is required to be audited under IC 5-11-1-9 or another
14 law.
15 (3) "Examination" refers to an audit or other examination of
16 the state board of accounts, its field examiners, or approved



1 private examiners under IC 5-11-1 or another law.

2 (b) The audit and financial reporting subcommittee of the
3 legislative council is established to assure the independence of the
4 examination process of the state board of accounts. The chairman
5 of the legislative council, with the advice of the vice chairman of
6 the legislative council, shall appoint the members of the audit
7 committee and its chairperson. The audit committee may have
8 members who are not members of the legislative council. All
9 members of the audit committee must possess or obtain a basic
10 understanding of governmental financial reporting and auditing.
11 To ensure the audit committee's independence and effectiveness, a
12 member of the audit committee may not exercise managerial
13 responsibilities that fall within the scope of an examination
14 required by IC 5-11-1.

15 (c) It is the responsibility of the audit committee to provide
16 independent review and oversight of the state board of accounts
17 and the examination process used by the state board of accounts.
18 To carry out this responsibility, the audit committee shall do at
19 least the following:

- 20 (1) Review the appointment and removal of members of the
21 state board of accounts as required by IC 5-11-1-1.
- 22 (2) Review and monitor the independence and objectivity of
23 the state board of accounts and the effectiveness of the
24 examination process, taking into consideration relevant
25 professional and regulatory requirements.
- 26 (3) Evaluate the findings and recommendations of any peer
27 review of the state board of accounts that is required by
28 recognized government auditing standards.
- 29 (4) Review the risk based audit plan of the state board of
30 accounts as required by IC 5-11-1-28.
- 31 (5) Receive and review reports of examinations submitted
32 under IC 5-11-5-1 or another law to monitor the integrity of
33 the financial reporting process and the effectiveness of the
34 state board of accounts in evaluating the internal accounting
35 controls of audited entities.
- 36 (6) Monitor the actions of the state board of accounts to follow
37 up on reported findings to assure corrective action is taken.
- 38 (7) Develop and implement policy on the engagement of the
39 state board of accounts, its field examiners, and appointed
40 private examiners to supply nonaudit services, taking into
41 account relevant ethical guidance regarding the provision of
42 nonaudit services by the state board of accounts.



1 **(8) Provide guidance to the state board of accounts on any**
 2 **accounting, examination, or financial reporting matter**
 3 **requested by the state board of accounts.**

4 **(9) At least annually, report to the legislative council on how**
 5 **the audit committee has discharged its duties and met its**
 6 **responsibilities.**

7 **(d) An audited entity shall provide the audit committee with**
 8 **information, including any reports of internal auditors and annual**
 9 **internal audit work plans, that the audit committee determines is**
 10 **necessary or appropriate to carry out the responsibilities of the**
 11 **audit committee. The audit committee shall establish procedures**
 12 **for the receipt, retention, and treatment of submitted concerns**
 13 **regarding accounting, internal accounting controls, or examination**
 14 **matters. The procedures must specifically provide for confidential**
 15 **(including anonymous) submission by staff of the state board of**
 16 **accounts or by employees of audited entities of concerns regarding**
 17 **questionable accounting or examination matters. In addition to any**
 18 **other grounds for an executive session permitted by law, the audit**
 19 **committee may meet in executive session to investigate confidential**
 20 **complaints or other submissions under this subsection.**

21 **(e) IC 2-5-1.2 applies to the committee. In addition, the audit**
 22 **committee may have access to the services of at least one (1)**
 23 **financial expert, either an audit committee member or an outside**
 24 **party engaged by the audit committee for this purpose. The**
 25 **financial expert must, through both education and experience and**
 26 **in a manner specifically relevant to the government sector, possess:**

27 **(1) an understanding of generally accepted accounting**
 28 **principles and financial statements;**

29 **(2) experience in preparing or auditing financial statements**
 30 **of comparable entities;**

31 **(3) experience in applying such principles in connection with**
 32 **the accounting for estimates, accruals, and reserves;**

33 **(4) experience with internal accounting controls; and**

34 **(5) an understanding of audit committee functions.**

35 **The expenses of the audit committee shall be paid from**
 36 **appropriations for the legislative council and the legislative**
 37 **services agency.**

38 SECTION 2. IC 5-11-1-1, AS AMENDED BY P.L.246-2005,
 39 SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 UPON PASSAGE]: Sec. 1. **(a)** There is established a state board of
 41 accounts. The board consists of the state examiner and two (2) deputy
 42 examiners, as provided in this section.



1 (b) The principal officer of the board is the state examiner. who
 2 shall **To hold the office of state examiner, an individual must:**

3 (1) be appointed by the governor; and who shall hold office for a
 4 term of four (4) years from the date of appointment. The state
 5 examiner must

6 (2) have the individual's appointment accepted by the audit
 7 committee in conformity with subsection (e); and

8 (3) be a certified public accountant. with at least three (3)
 9 consecutive years of active experience as a field examiner with
 10 the state board of accounts that immediately precedes the
 11 appointment as state examiner.

12 (c) The governor shall also appoint two (2) deputy examiners. who
 13 must have the same qualifications as the state examiner; be of different
 14 political parties; and be **To hold the office of deputy examiner, an
 15 individual must:**

16 (1) be appointed by the governor;

17 (2) have the individual's appointment accepted by the audit
 18 committee in conformity with subsection (e); and

19 (3) be a certified public accountant.

20 A deputy examiner is subordinate to the state examiner. The deputy
 21 examiners shall be appointed for terms of

22 (d) Not more than two (2) of the three (3) individuals appointed
 23 to the state board of accounts may be members of the same
 24 political party. The term of an individual appointed under
 25 subsection (b) or (c) is four (4) years. However:

26 (1) the term of the state examiner serving on January 1, 2014,
 27 ends October 30, 2017;

28 (2) the term of the deputy examiner serving as a deputy
 29 examiner on January 1, 2014, ends October 30, 2015; and

30 (3) the term of the initial deputy examiner appointed after
 31 January 1, 2014, to fill a vacancy on the state board of
 32 accounts on January 1, 2014, ends October 30, 2016.

33 (e) The governor shall submit to the executive director of the
 34 legislative services agency in an electronic format under IC 5-14-6
 35 the name of an individual who the governor recommends for
 36 appointment under subsection (b) or (c) along with any supporting
 37 information that the governor determines is appropriate. The
 38 executive director of the legislative services agency shall submit the
 39 governor's recommendation along with any submitted supporting
 40 information to the members of the audit committee and place the
 41 information on the Internet web site maintained by the general
 42 assembly. At a meeting open to the public, the audit committee



1 may adopt a resolution to accept or reject a recommendation of the
 2 governor. The audit committee may reject a recommendation with
 3 or without cause. If the audit committee fails to adopt a resolution
 4 accepting or rejecting a recommendation within forty-five (45)
 5 days after the recommendation is submitted to the executive
 6 director of the legislative services agency in an electronic format
 7 under IC 5-14-6, the recommendation shall be treated as accepted
 8 by the audit committee. A member of the state board of accounts
 9 serving on January 1, 2014, shall be treated as accepted by the
 10 audit committee to the same extent as if the audit committee had
 11 adopted a resolution that accepted the member's appointment.

12 (f) IC 4-21.5 applies to an action under this subsection. The state
 13 examiner and the deputy examiners are subject to removal by the
 14 governor for incompetency (including failure to maintain the
 15 individual's status as a certified public accountant) or for
 16 misconduct of the office. ~~after~~ If the governor seeks to remove a
 17 member of the state board of accounts under this subsection, the
 18 governor shall notify the member in writing of the governor's
 19 proposed action in conformity with IC 4-21.5-3-4 and submit a
 20 copy of the notice to the executive director of the legislative
 21 services agency in an electronic format under IC 5-14-6. The notice
 22 must state the reasons for the proposed action and indicate that the
 23 individual has fifteen (15) days after being given notice to petition
 24 for review of the proposed action. The notice must specify that a
 25 petition for review of the proposed action must be made in writing
 26 and be submitted to the executive director of the legislative services
 27 agency in accordance with IC 4-21.5-3-7. ~~hearing upon due notice~~
 28 ~~and upon stated charges in writing. An appeal may be taken by the~~
 29 ~~officer removed to~~ The notice must also state that the individual
 30 may petition the audit committee under IC 4-21.5-3-4 for a stay of
 31 the proposed action pending final resolution of the matter. If a
 32 timely petition is filed with the executive director of the legislative
 33 services agency, the audit committee shall conduct a proceeding
 34 under IC 4-21.5 to review the petition. The determination by the
 35 audit committee is a final order. An individual removed from office
 36 under this subsection may petition for judicial review of a final
 37 action of the audit committee under IC 4-21.5-5 in the circuit or a
 38 superior court of Marion County.

39 (g) A vacancy in the office of state examiner or deputy examiner
 40 must be filled in the same manner provided under this section for
 41 the appointment of the vacating officer. An individual appointed to
 42 fill a vacancy serves for the remainder of the vacating individual's



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term.

SECTION 3. IC 5-11-1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. (a) As used in this article, "municipality" means any county, township, city, town, school corporation, special taxing district, or other political subdivision of Indiana.

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

(c) As used in this article, "public office" means the office of any and every individual who for or on behalf of the state or any municipality or any public hospital holds, receives, disburses, or keeps the accounts of the receipts and disbursements of any public funds.

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

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

- (1) maintained in whole or in part at public expense; or
- (2) supported in whole or in part by appropriations or public funds or by taxation.

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

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

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

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

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

SECTION 4. IC 5-11-1-28 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 28. **(a) This subsection applies after the audit committee approves the risk based audit approach plan developed under subsection (c). In determining the type, timing, and extent of the procedures applied in an examination under this**



1 article, the state board of accounts, including its assistants and
 2 private examiners, shall use a risk based audit approach.
 3 Examinations using the risk based audit approach must be
 4 conducted in conformity with the plan approved by the audit
 5 committee. Any revision in the plan must be approved by the audit
 6 committee before the revision is effective.

7 (b) Subsection (a) does not extend the maximum time that may
 8 elapse between examinations, as specified in section 25 of this
 9 chapter. This section does not exempt the state board of accounts
 10 from the specific examination procedures or limitations on
 11 examination procedures specified in section 9(b) or 27 of this
 12 chapter, or another law.

13 (c) Not later than October 30, 2014, the state board of accounts
 14 shall develop and deliver to the governor and, in an electronic
 15 format under IC 5-14-6, to the audit committee a plan for
 16 implementing a risk based audit approach for its examinations
 17 under this article. The plan must include the following:

18 (1) An evaluation of a risk based audit approach and the
 19 advantages and risks presented by a risk based audit
 20 approach.

21 (2) A description of how a risk based audit approach would be
 22 implemented by the state board of accounts.

23 (3) An estimate of the fiscal impact to the state board of
 24 accounts and state agencies, municipalities, public hospitals,
 25 and other instrumentalities and entities subject to
 26 examination under this article, if the state board of accounts
 27 were to transition to a risk based audit approach.

28 (4) A plan for improving the internal examination processes
 29 of the state board of accounts, with the goal of identifying and
 30 preventing compliance issues and financial losses to the state,
 31 municipalities, public hospitals, and other public offices.

32 (5) A list of statutory and administrative duties performed by
 33 the state board of accounts that would be unnecessary or
 34 detrimental to the transition to a risk based audit approach by
 35 the state board of accounts.

36 SECTION 5. IC 5-11-5-1, AS AMENDED BY P.L.136-2012,
 37 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 UPON PASSAGE]: Sec. 1. (a) Whenever an examination is made
 39 under this article, a report of the examination shall be made. The report
 40 must include a list of findings and shall be signed and verified by the
 41 examiner making the examination. A finding that is critical of an
 42 examined entity must be based upon one (1) of the following:



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

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

4 A report that includes a finding that is critical of an examined entity
5 must designate the uniform compliance guideline or the specific law
6 upon which the finding is based. The reports shall immediately be filed
7 with the state examiner, and, after inspection of the report, the state
8 examiner shall immediately file one (1) copy with the officer or person
9 examined, one (1) copy with the auditing department of the
10 municipality examined and reported upon (**if the subject of the report**
11 **is a municipality**), and one (1) copy in an electronic format under
12 IC 5-14-6 ~~of the reports of examination of state agencies,~~
13 ~~instrumentalities of the state, and federal funds administered by the~~
14 ~~state~~ with the legislative services agency, as staff to the **audit**
15 **committee and the** general assembly. Upon filing, the report becomes
16 a part of the public records of the office of the state examiner, of the
17 office or the person examined, of the auditing department of the
18 municipality examined and reported upon, and of the legislative
19 services agency, as staff to **the audit committee and** the general
20 assembly. A report is open to public inspection at all reasonable times
21 after it is filed. If an examination discloses malfeasance, misfeasance,
22 or nonfeasance in office or of any officer or employee, a copy of the
23 report, signed and verified, shall be placed by the state examiner with
24 the attorney general and the inspector general. The attorney general
25 shall diligently institute and prosecute civil proceedings against the
26 delinquent officer, or upon the officer's official bond, or both, and
27 against any other proper person that will secure to the state or to the
28 proper municipality the recovery of any funds misappropriated,
29 diverted, or unaccounted for.

30 (b) Before an examination report is signed, verified, and filed as
31 required by subsection (a), the officer or the chief executive officer of
32 the state office, municipality, or entity examined must have an
33 opportunity to review the report and to file with the state examiner a
34 written response to that report. If a written response is filed, it becomes
35 a part of the examination report that is signed, verified, and filed as
36 required by subsection (a).

37 (c) Except as required by subsections (b) and (d), it is unlawful for
38 any deputy examiner, field examiner, or private examiner, before an
39 examination report is made public as provided by this section, to make
40 any disclosure of the result of any examination of any public account,
41 except to the state examiner or if directed to give publicity to the
42 examination report by the state examiner or by any court. If an



1 examination report shows or discloses the commission of a crime by
2 any person, it is the duty of the state examiner to transmit and present
3 the examination report to the grand jury of the county in which the
4 crime was committed at its first session after the making of the
5 examination report and at any subsequent sessions that may be
6 required. The state examiner shall furnish to the grand jury all evidence
7 at the state examiner's command necessary in the investigation and
8 prosecution of the crime.

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

13 (1) A substantial amount of public funds has been
14 misappropriated or diverted.

15 (2) The deputy examiner, field examiner, or private examiner
16 acting as an agent of the state examiner has a reasonable belief
17 that the malfeasance or misfeasance that resulted in the
18 misappropriation or diversion of the public funds was committed
19 by the officer or an employee of the office.

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

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

29 (g) A preliminary report under subsection (d) is confidential until
30 the final report under subsection (a) is issued, unless the attorney
31 general institutes an action under subsection (e) on the basis of the
32 preliminary report.

33 **SECTION 6. An emergency is declared for this act.**

