



February 25, 2014

ENGROSSED

SENATE BILL No. 338

DIGEST OF SB 338 (Updated February 25, 2014 12:56 pm - DI 87)

Citations Affected: IC 2-5; IC 5-11.

Synopsis: State board of accounts. Establishes an audit committee in the legislative department of state government to assure the independence of the state board of accounts. Specifies that the audit committee is comprised of five voting members and one advisory member. Provides that the director of the office of management and budget, or the director's designee, is the advisory member. Requires the report of each examination to be distributed to the audit committee. Requires that the appointment of and any removal of the state examiner must be approved by the legislative council. 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. Requires the state examiner to have at least five years of accounting experience, including at least three years of single audit experience in the public or private sector. 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.

Effective: Upon passage.

Hershman, Miller Pete

(HOUSE SPONSORS — TURNER, VANNATTER)

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

January 28, 2014, amended, reported favorably — Do Pass.

January 30, 2014, read second time, ordered engrossed.

January 31, 2014, engrossed.

February 3, 2014, re-engrossed. Read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

February 10, 2014, read first time and referred to Committee on Government and Regulatory Reform.

February 25, 2014, amended, reported — Do Pass.

ES 338—LS 6749/DI 51



February 25, 2014

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.

ENGROSSED 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 examined under IC 5-11-1-9 or
14 another law.
15 (3) "Examination" refers to an audit, examination, or other
16 engagement by the state board of accounts, its field

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- 1 examiners, or private examiners under IC 5-11-1 or another
2 law.
- 3 **(b) The audit and financial reporting subcommittee of the**
4 **legislative council is established to assure the independence of the**
5 **state board of accounts. The subcommittee is comprised of five (5)**
6 **voting members and one (1) advisory member, who shall be the**
7 **director of the office of management and budget, or the director's**
8 **designee. The chairman of the legislative council, with the advice**
9 **of the vice chairman of the legislative council, shall appoint the**
10 **voting members of the audit committee and its chairperson. The**
11 **audit committee may have members who are not members of the**
12 **legislative council. If the individual appointed is not a member of**
13 **the general assembly, the term of the member is three (3) years. If**
14 **the individual appointed is a member of the general assembly, the**
15 **term of the member is one (1) year. However, to stagger the terms**
16 **of the members, if the individual appointed is not a member of the**
17 **general assembly, the initial term of two (2) of these members is**
18 **two (2) years instead of three (3) years. All members of the audit**
19 **committee must possess or obtain a basic understanding of**
20 **governmental financial reporting and auditing. To ensure the audit**
21 **committee's independence and effectiveness, a member of the audit**
22 **committee may not exercise managerial responsibilities that fall**
23 **within the scope of an examination required by IC 5-11-1.**
- 24 **(c) It is the responsibility of the audit committee to provide**
25 **independent review and oversight of the state board of accounts**
26 **and the examination process used by the state board of accounts.**
27 **To carry out this responsibility, the audit committee shall do at**
28 **least the following:**
- 29 **(1) Review and monitor the independence and objectivity of**
30 **the state board of accounts and the effectiveness of the**
31 **examination process, taking into consideration relevant**
32 **professional and regulatory requirements.**
- 33 **(2) Evaluate the findings and recommendations of any peer**
34 **review of the state board of accounts that is required by**
35 **recognized government auditing standards.**
- 36 **(3) Receive and review reports of examinations submitted**
37 **under IC 5-11-5-1 or another law to monitor the integrity of**
38 **the financial reporting process and the effectiveness of the**
39 **state board of accounts in evaluating the internal accounting**
40 **controls of audited entities.**
- 41 **(4) Monitor the actions of the examined entities to follow up**
42 **on reported findings to assure corrective action is taken.**



1 (5) Review the policy on the engagement of the state board of
 2 accounts, its field examiners, and private examiners to supply
 3 nonaudit services, taking into account relevant ethical
 4 guidance regarding the provision of nonaudit services by the
 5 state board of accounts.

6 (6) Provide guidance to the state board of accounts on any
 7 accounting, examination, or financial reporting matter
 8 requested by the state board of accounts.

9 (7) At least annually, report to the legislative council on how
 10 the audit committee has discharged its duties and met its
 11 responsibilities.

12 (d) An examined entity shall provide the audit committee with
 13 information, including any reports of internal auditors and annual
 14 internal audit work plans, that the audit committee requests as
 15 necessary or appropriate to carry out the responsibilities of the
 16 audit committee.

17 (e) IC 2-5-1.2 applies to the committee. In addition, the audit
 18 committee may retain the services of at least one (1) financial
 19 expert who is either an audit committee member or an outside
 20 party engaged by the audit committee for this purpose. The
 21 financial expert must, through both education and experience and
 22 in a manner specifically relevant to the government sector, possess:

23 (1) an understanding of generally accepted accounting
 24 principles and financial statements;

25 (2) experience in preparing or auditing financial statements
 26 of comparable entities;

27 (3) experience in applying such principles in connection with
 28 the accounting for estimates, accruals, and reserves;

29 (4) experience with internal accounting controls; and

30 (5) an understanding of audit committee functions.

31 The expenses of the audit committee shall be paid from
 32 appropriations for the legislative council and the legislative
 33 services agency.

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

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

41 (1) be appointed by the governor; and ~~who shall hold office for a~~
 42 term of four (4) years from the date of appointment. ~~The state~~



- 1 examiner must
- 2 **(2) have the individual's appointment accepted by the**
- 3 **legislative council in conformity with subsection (e); and**
- 4 **(3) be a certified public accountant with at least three (3)**
- 5 **consecutive years of active experience as a field examiner with**
- 6 **the state board of accounts that immediately precedes the**
- 7 **appointment as state examiner. five (5) years of accounting**
- 8 **experience, including at least three (3) years of single audit**
- 9 **experience in the public or private sector.**
- 10 (c) The governor shall also appoint two (2) deputy examiners. who
- 11 must have the same qualifications as the state examiner; be of different
- 12 political parties; and be **To hold the office of deputy examiner, an**
- 13 **individual must:**
- 14 **(1) be appointed by the governor; and**
- 15 **(2) be a certified public accountant.**
- 16 A deputy examiner is subordinate to the state examiner. The deputy
- 17 examiners shall be appointed for terms of **In the case of deputy**
- 18 **examiners appointed after June 30, 2014, at least one (1) of the**
- 19 **deputy examiners must have at least three (3) years of experience**
- 20 **with the state board of accounts at the time of appointment.**
- 21 (d) Not more than two (2) of the three (3) individuals appointed
- 22 to the state board of accounts may be members of the same
- 23 political party. The term of a state examiner is four (4) years.
- 24 However, the term of the state examiner serving on January 1,
- 25 2014, ends December 31, 2017. Notwithstanding the expiration of
- 26 the term of a state examiner, the state examiner may continue to
- 27 serve as acting state examiner until a state examiner is appointed
- 28 or reappointed. The term of a deputy examiner is coterminous with
- 29 the term of the state examiner.
- 30 (e) The governor shall submit to the executive director of the
- 31 legislative services agency in an electronic format under IC 5-14-6
- 32 the name of an individual who the governor recommends for
- 33 appointment under subsection (b) along with any supporting
- 34 information that the governor determines is appropriate. The
- 35 executive director of the legislative services agency shall submit the
- 36 governor's recommendation along with any submitted supporting
- 37 information to the members of the legislative council and place the
- 38 information on the Internet web site maintained by the general
- 39 assembly. At a meeting open to the public, the legislative council
- 40 may adopt a resolution to accept or reject a recommendation of the
- 41 governor. The legislative council may reject a recommendation
- 42 with or without cause. If the legislative council fails to adopt a



1 resolution accepting or rejecting a recommendation within
 2 forty-five (45) days after the recommendation is submitted to the
 3 executive director of the legislative services agency in an electronic
 4 format under IC 5-14-6, the recommendation shall be treated as
 5 accepted by the legislative council. The state examiner serving on
 6 January 1, 2014, shall be treated as accepted by the legislative
 7 council to the same extent as if the legislative council had adopted
 8 a resolution that accepted the state examiner's appointment.

9 (f) **IC 4-21.5 applies to an action under this subsection.** The state
 10 examiner and the deputy examiners are subject to removal by the
 11 governor for incompetency (**including failure to maintain the**
 12 **individual's status as a certified public accountant**) or for
 13 misconduct of the office. ~~after a~~ **If the governor seeks to remove the**
 14 **state examiner under this subsection, the governor shall notify the**
 15 **state examiner in writing of the governor's proposed action in**
 16 **conformity with IC 4-21.5-3-4 and submit a copy of the notice to**
 17 **the executive director of the legislative services agency in an**
 18 **electronic format under IC 5-14-6. The notice must state the**
 19 **reasons for the proposed action and indicate that the state**
 20 **examiner has fifteen (15) days after being given notice to petition**
 21 **for review of the proposed action. The notice must specify that a**
 22 **petition for review of the proposed action must be made in writing**
 23 **and be submitted to the executive director of the legislative services**
 24 **agency in accordance with IC 4-21.5-3-7. hearing upon due notice**
 25 **and upon stated charges in writing. An appeal may be taken by the**
 26 ~~officer removed to~~ **The notice must also state that the state examiner**
 27 **may petition the legislative council under IC 4-21.5-3-4 for a stay**
 28 **of the proposed action pending final resolution of the matter. If a**
 29 **timely petition is filed with the executive director of the legislative**
 30 **services agency, the legislative council shall conduct a proceeding**
 31 **under IC 4-21.5 to review the petition. The determination by the**
 32 **legislative council is a final order. A state examiner removed from**
 33 **office under this subsection may petition for judicial review of a**
 34 **final action of the legislative council under IC 4-21.5-5 in the circuit**
 35 **or a superior court of Marion County. A deputy examiner removed**
 36 **from office under this subsection may petition for judicial review**
 37 **regarding the removal in the circuit or a superior court of Marion**
 38 **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 5-11-5-1, AS AMENDED BY P.L.136-2012, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Whenever an examination is made under this article, a report of the examination shall be made. The report must include a list of findings and shall be signed and verified by the examiner making the examination. A finding that is critical of an



1 examined entity must be based upon one (1) of the following:

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

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

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

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

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



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

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

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

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

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

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

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

34 **SECTION 5. An emergency is declared for this act.**



COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 338, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 13, delete "audited" and insert "**examined**".

Page 1, line 15, delete "or other examination of" and insert "**examination, or other engagement by**".

Page 2, line 4, delete "examination process of the".

Page 2, line 4, after "accounts." insert "**The subcommittee is comprised of five (5) voting members and one (1) advisory member, who shall be the director of the office of management and budget, or the director's designee.**".

Page 2, line 6, after "appoint the" insert "**voting**".

Page 2, line 8, after "council." insert "**If the individual appointed is not a member of the general assembly, the term of the member is three (3) years. If the individual appointed is a member of the general assembly, the term of the member is one (1) year. However, to stagger the terms of the members, if the individual appointed is not a member of the general assembly, the initial term of two (2) of these members is two (2) years instead of three (3) years.**".

Page 2, delete lines 20 through 21.

Page 2, line 22, delete "(2)" and insert "**(1)**".

Page 2, line 26, delete "(3)" and insert "**(2)**".

Page 2, delete lines 29 through 30.

Page 2, line 31, delete "(5)" and insert "**(3)**".

Page 2, line 36, delete "(6)" and insert "**(4)**".

Page 2, line 36, delete "state board of accounts" and insert "**examined entities**".

Page 2, line 38, delete "(7) Develop and implement" and insert "**(5) Review the**".

Page 3, line 1, delete "(8)" and insert "**(6)**".

Page 3, line 4, delete "(9)" and insert "**(7)**".

Page 3, line 7, delete "audited" and insert "**examined**".

Page 3, line 9, delete "determines is" and insert "**requests as**".

Page 3, line 11, delete "The audit committee shall establish procedures".

Page 3, delete lines 12 through 20.

Page 3, line 22, delete "have access to" and insert "**retain**".

Page 3, line 23, delete "," and insert "**who is**".

Page 4, line 6, delete "audit" and insert "**legislative council**".



Page 4, line 7, delete "committee".

Page 4, line 8, after "accountant" delete ".".

Page 4, line 8, reset in roman "with at least".

Page 4, line 11, after "examiner." insert **"five (5) years of accounting experience, including at least three (3) years of single audit experience in the public or private sector."**

Page 4, line 16, after "governor;" insert **"and"**.

Page 4, delete lines 17 through 18.

Page 4, line 19, delete "(3)" and insert **"(2)"**.

Page 4, line 21, after "of" insert **"In the case of deputy examiners appointed after June 30, 2014, at least one (1) of the deputy examiners must have at least three (3) years of experience with the state board of accounts at the time of appointment."**

Page 4, line 25, after "However" delete ":" and insert ",".

Page 4, line 26, delete "(1)".

Page 4, run in lines 25 through 27.

Page 4, line 27, delete "October 30," and insert **"December 31,"**.

Page 4, line 27, after "2017" delete ";" and insert **"**.

Notwithstanding the expiration of the term of a state examiner, the state examiner may continue to serve as acting state examiner until a state examiner is appointed or reappointed."

Page 4, delete lines 28 through 32.

Page 4, line 36, delete "or (c)".

Page 4, line 40, delete "audit committee" and insert **"legislative council"**.

Page 4, line 42, delete "audit committee" and insert **"legislative council"**.

Page 5, line 2, delete "audit committee" and insert **"legislative council"**.

Page 5, line 3, delete "audit committee" and insert **"legislative council"**.

Page 5, line 8, delete "audit committee." and insert **"legislative council."**

Page 5, line 10, delete "audit committee to the same extent as if the audit committee" and insert **"legislative council to the same extent as if the legislative council"**.

Page 5, line 16, delete "a" and insert **"the state examiner"**.

Page 5, line 17, delete "member of the state board of accounts".

Page 5, line 18, delete "member" and insert **"state examiner"**.

Page 5, line 23, delete "individual" and insert **"state examiner"**.

Page 5, line 29, delete "individual" and insert **"state examiner"**.

Page 5, line 30, delete "audit committee" and insert **"legislative"**



council".

Page 5, line 33, delete "audit committee" and insert "**legislative council".**

Page 5, line 35, delete "audit committee" and insert "**legislative council".**

Page 5, line 35, delete "An individual" and insert "**A state examiner".**

Page 5, line 37, delete "audit committee" and insert "**legislative council".**

Page 5, line 38, after "County." insert "**A deputy examiner removed from office under this subsection may petition for judicial review regarding the removal in the circuit or a superior court of Marion County.**".

Page 6, delete lines 37 through 42.

Page 7, delete lines 1 through 35.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 338 as introduced.)

HERSHMAN, Chairperson

Committee Vote: Yeas 10, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred Senate Bill 338, 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 2, line 1, delete "approved".

Page 3, line 2, delete "appointed".

Page 4, line 23, delete "an individual appointed under" and insert "**a state examiner".**

Page 4, line 24, delete "**subsection (b) or (c)".**

Page 4, line 28, after "reappointed." insert "**The term of a deputy examiner is coterminous with the term of the state examiner.**".

Page 5, line 4, delete "A member of the state board of" and insert "**The state examiner".**

Page 5, line 5, delete "accounts".

Page 5, line 7, delete "member's" and insert "**state examiner's".**

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Page 5, line 13, after "after" insert "a".
and when so amended that said bill do pass.

(Reference is to SB 338 Printer's Error as printed January 29, 2014.)

MAHAN, Chair

Committee Vote: yeas 9, nays 4.

