

CF 6lr1028

By: Senator Amoss (Chairman, Joint Budget and Audit Committee)

Introduced and read first time: January 31, 1996

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 23, 1996

CHAPTER _____

1 AN ACT concerning

2 General Assembly - Department of Fiscal Services - Office of Legislative Audits

3 FOR the purpose of altering the time requirement within which the Office of Legislative
4 Audits is mandated to conduct fiscal/compliance audits; clarifying that the
5 Legislative Branch is exempt from the fiscal/compliance audit requirement;
6 providing factors the Office shall take into consideration in determining the audit
7 schedule for the units of government that are subject to the Office's audit authority;
8 providing that each agency or program may be audited separately or as a part of a
9 larger organizational unit of State government; authorizing the Director of the
10 Department of Fiscal Services to direct the Office to conduct an audit or review for
11 certain purposes; clarifying that performance audits are to be conducted when
12 authorized by the Legislative Auditor, when directed by the Joint Budget and Audit
13 Committee or the Director of the Department of Fiscal Services, or when otherwise
14 required by law; stating the purpose of financial statement audits; requiring
15 fiscal/compliance, performance, and financial statement audits to be conducted in
16 accordance with generally accepted government auditing standards; providing that,
17 on the approval of the Joint Budget and Audit Committee, the Office of Legislative
18 Audits shall develop and use a rating system for determining the overall evaluation
19 of the financial transactions and records of units of State government; authorizing
20 the Legislative Auditor, under certain circumstances, to authorize all or a portion of
21 an audit or review to be conducted at the offices of the Office of Legislative Audits;
22 clarifying that access of the Legislative Auditor to certain records includes the
23 records of certain contractors under certain circumstances; providing that if a
24 person fails to comply with a subpoena issued by the Legislative Auditor or fails to
25 provide information that is requested during an audit or review, a circuit court may
26 pass an order directing compliance with the subpoena or compelling that the
27 information requested be provided and may enforce the order by proceedings for
28 contempt; requiring the Director of the Department of Fiscal Services to send,

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1 under certain circumstances, a copy of certain reports of the Legislative Auditor to
2 the Attorney General, the Treasurer, and the units that have been audited or
3 reviewed by the Office of Legislative Audits; authorizing the Director of the
4 Department of Fiscal Services and the Joint Budget and Audit Committee to direct
5 the Legislative Auditor to undertake a review to determine the extent to which
6 action has been taken by a unit to implement a recommendation in an audit report;
7 providing that the Legislative Auditor may authorize the disclosure of information
8 obtained during an audit or review to the Joint Budget and Audit Committee if
9 necessary to assist it in reviewing a report issued by the Auditor; providing for the
10 effective date of this Act; and generally relating to the Office of Legislative Audits
11 of the Department of Fiscal Services of the General Assembly of Maryland.

12 BY repealing and reenacting, without amendments,
13 Article - State Government
14 Section 2-1212, 2-1213, 2-1214, and 2-1222
15 Annotated Code of Maryland
16 (1995 Replacement Volume)

17 BY repealing and reenacting, with amendments,
18 Article - State Government
19 Section 2-1215, 2-1216, 2-1217, 2-1218, 2-1219, 2-1220, and 2-1221
20 Annotated Code of Maryland
21 (1995 Replacement Volume)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article - State Government**

25 2-1212.

26 There is an Office of Legislative Audits in the Department.

27 2-1213.

28 (a) The head of the Office of Legislative Audits is the Legislative Auditor, who
29 shall be appointed by the Director with the approval of the President and the Speaker.

30 (b) (1) For 1 year after appointment and, if the Director extends the
31 probationary period, for 1 additional 6-month period, the Legislative Auditor is in a
32 probationary status and may be dismissed by the Director with the approval of the
33 President and the Speaker.

34 (2) After the probationary period, the Legislative Auditor serves without a
35 fixed term and, with the approval of the President and the Speaker, maybe removed as
36 provided in § 2-1207(g) of this subtitle.

37 (c) The Legislative Auditor must:

38 (1) be licensed as a certified public accountant in the State;

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1 (2) at the time of appointment, have at least 3 years' accounting experience;
2 and

3 (3) while in office, be covered by a surety bond in the form and amount
4 required by law.

5 (d) Subject to the policies and directives of the Director and the Joint Budget and
6 Audit Committee, the Legislative Auditor has general administrative control of the
7 operation of the Office of Legislative Audits.

8 (e) The Legislative Auditor shall devote full time to the duties of office.

9 2-1214.

10 (a) With the approval of the Director, the Legislative Auditor shall appoint a
11 Deputy Legislative Auditor and other professional staff.

12 (b) (1) The Deputy Legislative Auditor must be licensed as a certified public
13 accountant in the State.

14 (2) The Deputy Legislative Auditor:

15 (i) has the duties delegated by the Legislative Auditor; and

16 (ii) may be designated by the Director to act as Legislative Auditor if
17 the office is vacant or the Legislative Auditor is unable to perform the duties of office.

18 2-1215.

19 (a) (1) In this subsection, "unit" includes EACH STATE DEPARTMENT,
20 AGENCY, AND PROGRAM, INCLUDING each clerk of court and each register of wills.

21 (2) (i) At least once every [2] 3 years, the Office of Legislative Audits
22 shall CONDUCT A FISCAL/COMPLIANCE audit OF each unit of the State government
23 EXCEPT FOR UNITS IN THE LEGISLATIVE BRANCH.

24 (II) IN DETERMINING THE AUDIT SCHEDULE FOR A UNIT, THE
25 OFFICE OF LEGISLATIVE AUDITS SHALL TAKE INTO CONSIDERATION:

26 1. THE MATERIALITY AND RISK OF THE UNIT'S FISCAL
27 ACTIVITIES WITH RESPECT TO THE STATE'S FISCAL ACTIVITIES;

28 2. THE COMPLEXITY OF THE UNIT'S FISCAL STRUCTURE;
29 AND

30 3. THE NATURE AND EXTENT OF AUDIT FINDINGS IN THE
31 UNIT'S PRIOR AUDIT REPORTS.

32 (III) EACH AGENCY OR PROGRAM MAY BE AUDITED SEPARATELY
33 OR AS PART OF A LARGER ORGANIZATIONAL UNIT OF STATE GOVERNMENT.

34 [(ii)] (IV) 1. The Office of Legislative Audits has the authority to
35 conduct a separate investigation of an act or allegation of fraud, waste, or abuse in the
36 obligation, expenditure, receipt, or use of State funds.

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1 (b) (1) PERFORMANCE AUDITS SHALL BE CONDUCTED WHEN AUTHORIZED
2 BY THE LEGISLATIVE AUDITOR, WHEN DIRECTED BY THE JOINT BUDGET AND
3 AUDIT COMMITTEE OR THE DIRECTOR OF THE DEPARTMENT OF FISCAL SERVICES,
4 OR WHEN OTHERWISE REQUIRED BY LAW.

5 (2) [An] A PERFORMANCE audit [of] CONDUCTED BY the Office of
6 Legislative Audits may include:

7 [(1)] (I) a review of the efficiency, EFFECTIVENESS, and economy with
8 which resources are used; and

9 [(2)] (II) a review to determine whether desired program results are
10 achieved [effectively].

11 (C) THE PURPOSE OF FINANCIAL STATEMENT AUDITS CONDUCTED BY THE
12 OFFICE OF LEGISLATIVE AUDITS SHALL BE TO EXPRESS AN OPINION REGARDING
13 THE FAIRNESS OF THE PRESENTATION OF A UNIT'S FINANCIAL STATEMENTS.

14 (D) THE AUDITS REFERRED TO IN SUBSECTIONS (A), (B), AND (C) OF THIS
15 SECTION SHALL BE CONDUCTED IN ACCORDANCE WITH GENERALLY ACCEPTED
16 GOVERNMENT AUDITING STANDARDS.

17 (E) A REVIEW MAY BE CONDUCTED BY THE OFFICE OF LEGISLATIVE AUDITS
18 WHEN THE OBJECTIVES OF THE WORK TO BE PERFORMED CAN BE SATISFACTORILY
19 FULFILLED WITHOUT CONDUCTING AN AUDIT AS PRESCRIBED IN SUBSECTIONS (A),
20 (B), OR (C) OF THIS SECTION.

21 [(c)] (F) [The] UPON APPROVAL OF THE JOINT BUDGET AND AUDIT
22 COMMITTEE, THE Office of Legislative Audits [may] SHALL develop AND USE A
23 RATING SYSTEM FOR DETERMINING an overall evaluation of a unit's financial
24 transactions and records and compliance with applicable laws and [orders]
25 REGULATIONS as a means of comparing the various units of State government. [The]
26 WHEN AN evaluation IS ISSUED, IT SHALL BE PROVIDED TO THE UNIT AND shall be
27 available to the Joint Budget and Audit Committee and the Budget Committees of the
28 Maryland General Assembly.

29 2-1217.

30 (A) An audit [of] OR REVIEW CONDUCTED BY the Office of Legislative Audits
31 shall GENERALLY be made at the offices of the State unit, county officer or unit,
32 corporation, or association that is subject to audit OR REVIEW.

33 (B) IF CONSIDERED APPROPRIATE, THE LEGISLATIVE AUDITOR MAY
34 AUTHORIZE ALL OR A PORTION OF AN AUDIT OR REVIEW TO BE CONDUCTED AT
35 THE OFFICES OF THE OFFICE OF LEGISLATIVE AUDITS.

36 2-1218.

37 (a) (1) Except as prohibited by the federal Internal Revenue Code, during an
38 [audit,] AUDIT OR REVIEW, the employees of the Office of Legislative Audits shall have
39 access to and may inspect the records, including those that are confidential by law, of any
40 unit of the State government or of a person or other body receiving State funds, with
41 respect to any matter under the jurisdiction of the Office of Legislative Audits.

1 (2) IN CONJUNCTION WITH AN AUDIT OR REVIEW AUTHORIZED UNDER
2 § 2-1215 OF THIS ARTICLE, THE ACCESS REQUIRED BY PARAGRAPH (1) OF THIS
3 SUBSECTION SHALL INCLUDE THE RECORDS OF CONTRACTORS AND
4 SUBCONTRACTORS THAT PERFORM WORK UNDER STATE CONTRACTS.

5 (b) Each officer or employee of the unit or body that is subject to audit OR
6 REVIEW shall provide any information that the Legislative Auditor [finds to be needed]
7 REQUESTS for the audit OR REVIEW, including information that otherwise would be
8 confidential under any provision of law.

9 (c) (1) The Legislative Auditor may issue process that requires an official who
10 is subject to audit OR REVIEW to produce a record that is [needed] REQUESTED for the
11 audit OR REVIEW.

12 (2) The process shall be sent to the sheriff for the county where the official
13 is located.

14 (3) The sheriff promptly shall serve the process.

15 (4) The State shall pay the cost of process.

16 (5) IF A PERSON FAILS TO COMPLY WITH A SUBPOENA ISSUED UNDER
17 THIS SUBSECTION OR FAILS TO PROVIDE INFORMATION THAT IS REQUESTED
18 DURING AN AUDIT OR REVIEW, A CIRCUIT COURT MAY:

19 (I) PASS AN ORDER DIRECTING COMPLIANCE WITH THE
20 SUBPOENA OR COMPELLING THAT THE INFORMATION REQUESTED BE PROVIDED;
21 AND

22 (II) ENFORCE THE ORDER BY PROCEEDINGS FOR CONTEMPT.

23 2-1219.

24 (a) Except with the written approval of the Legislative Auditor, an employee of
25 the Office of Legislative Audits shall submit any report of findings only to the Legislative
26 Auditor.

27 (b) (1) On the completion of each audit OR REVIEW, the Legislative Auditor
28 shall submit a full and detailed [audit] report, subject to § 2-1312 of this article, to the
29 Joint Budget and Audit Committee and the Director.

30 (2) [An audit] A report shall include:

31 (i) the [audit] findings; [and]

32 (ii) any appropriate recommendations for changes in recordkeeping or
33 in other conduct of the unit or body audited OR REVIEWED; AND

34 (III) ANY RESPONSE OF THE UNIT OR BODY AUDITED OR
35 REVIEWED, SUBJECT TO PROCEDURES APPROVED BY THE JOINT BUDGET AND
36 AUDIT COMMITTEE.

37 (c) The Director shall send a copy of the [audit] report of the Legislative
38 Auditor to:

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- 1 (1) the Governor;
- 2 (2) the Comptroller; [and]
- 3 (3) THE TREASURER;
- 4 ~~(3)~~ (4) THE ATTORNEY GENERAL;
- 5 ~~(4)~~ (5) THE UNIT THAT HAS BEEN AUDITED OR REVIEWED; AND
- 6 [(3)] ~~(5)~~ (6) any other person whom the Joint Budget and Audit
- 7 Committee specifies.

8 (d) After the expiration of any period that the Joint Budget and Audit Committee

9 specifies, [an audit] A report of the Legislative Auditor is available to the public under

10 §§ 10-602 and 10-611 through 10-628 of this article.

11 (e) (1) [The units of State government shall respond to the Director with

12 copies to the Joint Budget and Audit Committee, the Comptroller, and the Secretary of

13 Budget and Fiscal Planning as to the recommendations of the Legislative Auditor.

14 (2) The Director or the Committee may direct the Legislative Auditor to

15 undertake a review of the unit's response to determine the extent to which the action in

16 response to the recommendations has been taken.

17 (3) The Director shall REVIEW EACH UNIT'S RESPONSE AND ADVISE THE

18 UNIT OF THE RESULTS OF THE REVIEW. THE DIRECTOR SHALL advise the Joint

19 Budget and Audit Committee when:

- 20 (i) a unit does not make a response to a recommendation;
- 21 (ii) a unit does not indicate action to be taken in response to a
- 22 recommendation;
- 23 (iii) a unit has not taken the action the unit indicated in its response to
- 24 a recommendation;
- 25 (iv) a unit requests a waiver from a recommendation; or
- 26 (v) the response by the unit is not considered appropriate to carry out
- 27 the recommendation.

28 (2) THE DIRECTOR OR THE COMMITTEE MAY DIRECT THE LEGISLATIVE

29 AUDITOR TO UNDERTAKE A REVIEW TO DETERMINE THE EXTENT TO WHICH

30 ACTION HAS BEEN TAKEN BY A UNIT TO IMPLEMENT A REPORT RECOMMENDATION.

31 [(4)] (3) With respect to findings and recommendations of a [fiscal and

32 compliance] FISCAL/COMPLIANCE nature, the Committee may recommend to the

33 Governor and the Comptroller that the unit take the corrective action the unit indicates

34 would be taken or take [corrective] action to correct the findings in the [audit] report

35 or the Committee may grant a waiver from the recommended action.

36 [(5)] (4) Within 45 days after receipt of the recommendation the Governor

37 shall advise the Committee as to the action taken with respect to the recommendation.

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1 [(6)] (5) Without concurrence of the Comptroller, the Committee may not
2 waive a recommendation of the Legislative Auditor with respect to fiscal and financial
3 recordkeeping, a uniform system of accounting, or the submission of fiscal and financial
4 reports by the units.

5 [(7)] (6) With respect to findings and recommendations of a performance
6 nature, the Committee may make recommendations to the Governor or propose
7 legislation after reviewing a unit's response to a recommended action.

8 2-1220.

9 (a) (1) In addition to the [audit] report under § 2-1219 of this subtitle, the
10 Legislative Auditor shall report an apparent violation of any law on use of State funds by
11 the unit of the State government or other body that is audited OR REVIEWED.

12 (2) A report under this subsection shall be submitted to:

13 (i) the Joint Budget and Audit Committee;

14 (ii) the Director;

15 (iii) the unit or body that is the subject of the report; and

16 (iv) the Office of the Attorney General.

17 (b) (1) The Legislative Auditor shall report to the Attorney General and an
18 appropriate State's Attorney an apparent default to the State for any money by an officer
19 or employee who is subject to audit OR REVIEW.

20 (2) A report under this subsection shall ask the Attorney General and
21 State's Attorney to take appropriate action.

22 (c) (1) The Office of the Attorney General shall respond, in writing, to a report
23 received from the Legislative Auditor under this section.

24 (2) The response of the Attorney General shall include what actions, if any,
25 were taken as a result of the findings of the Legislative Auditor.

26 (3) The response of the Attorney General shall be submitted to:

27 (i) the Joint Budget and Audit Committee;

28 (ii) the Director;

29 (iii) the unit or body that is the subject of the report; and

30 (iv) the Legislative Auditor.

31 2-1221.

32 (a) Except as provided in subsection (b) of this section, information that an
33 employee of the Office of Legislative Audits obtains during an audit OR REVIEW:

34 (1) is confidential; and

35 (2) may not be disclosed except to another employee of the Office.

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1 (b) The Legislative Auditor may authorize the disclosure of information obtained
2 during an audit OR REVIEW only to the following:

3 (1) another employee of the Department, with the approval of the Director;
4 [or]

5 (2) federal, State, or local officials, or their auditors, who provide evidence
6 to the Legislative Auditor that they are performing investigations, studies, or audits
7 related to that same audit and who provide justification for the specific information
8 requested; OR

9 (3) THE JOINT BUDGET AND AUDIT COMMITTEE, IF NECESSARY TO
10 ASSIST THE COMMITTEE IN REVIEWING A REPORT ISSUED BY THE LEGISLATIVE
11 AUDITOR.

12 (c) If information that an employee obtains during an audit also is confidential
13 under another law, the employee or the Legislative Auditor may not include in a report or
14 otherwise use the information in any manner that discloses the identity of any person who
15 is the subject of the confidential information.

16 2-1222.

17 A person is guilty of a misdemeanor and on conviction is subject to a fine not
18 exceeding \$1,000 if the person:

19 (1) fails to comply promptly with process that the Legislative Auditor issues
20 under this Part III of this subtitle; or

21 (2) violates any provision of § 2-1219(a) or § 2-1221 of this subtitle.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 July 1, 1996.