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By: **Senator McFadden (Chairman, Joint Audit Committee)**

Introduced and read first time: January 24, 2006

Assigned to: Budget and Taxation

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A BILL ENTITLED

1 AN ACT concerning

2 **General Assembly - Office of Legislative Audits - Authorized**  
3 **Representatives and Authorized Work**

4 FOR the purpose of authorizing the Legislative Auditor to contract with consultants  
5 as authorized representatives; adding the authorized representatives to all  
6 provisions applicable to employees of the Office of Legislative Audits; clarifying  
7 that performance audits, financial statement audits, and reviews are authorized  
8 work performed by the Office of Legislative Audits; altering a certain  
9 investigation conducted by the Office of Legislative Audits to include resources  
10 rather than funds; repealing the requirement that the Office of Legislative  
11 Audits perform a certain audit of the Maryland-National Capital Park and  
12 Planning Commission at the request of certain officials or the Joint Audit  
13 Committee; clarifying that a certain rating system is based on the results of a  
14 fiscal/compliance audit; authorizing an examination to occur at the offices of a  
15 local school system; defining a certain term; clarifying that certain provisions  
16 relating to access to records, process, reporting, enforcement, and confidentiality  
17 apply to all authorized work and required audits under a certain provision;  
18 requiring a unit or body subject to an examination to provide certain  
19 information to the Legislative Auditor; establishing a process for the Joint Audit  
20 Committee to review local school systems' responses to certain audits; making  
21 stylistic changes; and generally relating to the authorized representatives and  
22 the authorized work of the Office of Legislative Audits.

23 BY repealing and reenacting, without amendments,  
24 Article - State Government  
25 Section 2-1217, 2-1218, and 2-1227  
26 Annotated Code of Maryland  
27 (2004 Replacement Volume and 2005 Supplement)

28 BY repealing and reenacting, with amendments,  
29 Article - State Government  
30 Section 2-1219 through 2-1226  
31 Annotated Code of Maryland  
32 (2004 Replacement Volume and 2005 Supplement)

1 BY adding to  
2 Article - State Government  
3 Section 2-1219.1  
4 Annotated Code of Maryland  
5 (2004 Replacement Volume and 2005 Supplement)

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

8 **Article - State Government**

9 2-1217.

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

11 2-1218.

12 (a) The head of the Office of Legislative Audits is the Legislative Auditor, who  
13 shall be appointed by the Executive Director, subject to the approval of the President  
14 and the Speaker.

15 (b) The Legislative Auditor must:

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

17 (2) at the time of appointment, have at least 3 years' auditing experience;  
18 and

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

21 (c) The Legislative Auditor serves without a fixed term and may be removed  
22 by the Executive Director, subject to the approval of the President and the Speaker.

23 (d) The Legislative Auditor is entitled to the salary provided in the State  
24 budget.

25 (e) Subject to the policies and directives of the President and the Speaker, the  
26 Joint Audit Committee, and the overall supervision and control of the Executive  
27 Director, the Legislative Auditor has general administrative control of the operation  
28 of the Office of Legislative Audits.

29 (f) The Legislative Auditor shall devote full time to the duties of office and  
30 shall serve in a nonpartisan capacity.

31 2-1219.

32 (a) With the approval of the Executive Director, the Legislative Auditor shall  
33 appoint a Deputy Legislative Auditor and other professional staff AND MAY  
34 CONTRACT WITH CONSULTANTS AS AUTHORIZED REPRESENTATIVES.

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

3 (2) The Deputy Legislative Auditor:

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

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

8 (c) With the approval of the Executive Director, the Legislative Auditor shall  
9 appoint professional staff to conduct audits of local school systems in accordance with  
10 [§ 2-1220(f)] § 2-1220(E) of this subtitle.

11 2-1219.1.

12 IN THIS SUBTITLE, "EXAMINATION" INCLUDES ALL AUTHORIZED WORK AND  
13 REQUIRED AUDITS UNDER § 2-1220 OF THIS SUBTITLE.

14 2-1220.

15 (a) (1) In this subsection, "unit" includes each State department, agency,  
16 unit, and program, including each clerk of court and each register of wills.

17 (2) (i) At least once every 3 years, the Office of Legislative Audits shall  
18 conduct a fiscal/compliance audit of each unit of the State government, except for  
19 units in the Legislative Branch.

20 (ii) In determining the audit schedule for a unit, the Office of  
21 Legislative Audits shall take into consideration:

22 1. the materiality and risk of the unit's fiscal activities with  
23 respect to the State's fiscal activities;

24 2. the complexity of the unit's fiscal structure; and

25 3. the nature and extent of audit findings in the unit's prior  
26 audit reports.

27 (iii) Each agency or program may be audited separately or as part of  
28 a larger organizational unit of State government.

29 (3) PERFORMANCE AUDITS OR FINANCIAL STATEMENT AUDITS SHALL  
30 BE CONDUCTED WHEN AUTHORIZED BY THE LEGISLATIVE AUDITOR, WHEN  
31 DIRECTED BY THE JOINT AUDIT COMMITTEE OR THE EXECUTIVE DIRECTOR, OR  
32 WHEN OTHERWISE REQUIRED BY LAW.

33 (4) (I) IN ADDITION TO THE AUDITS REQUIRED UNDER PARAGRAPH (2)  
34 OF THIS SUBSECTION, THE OFFICE OF LEGISLATIVE AUDITS MAY CONDUCT A  
35 REVIEW WHEN THE OBJECTIVES OF THE WORK TO BE PERFORMED CAN BE

1 SATISFACTORILY FULFILLED WITHOUT CONDUCTING AN AUDIT AS PRESCRIBED IN §  
2 2-1221 OF THIS SUBTITLE.

3 [(iv)] (II) 1. The Office of Legislative Audits has the authority to  
4 conduct a separate investigation of an act or allegation of fraud, waste, or abuse in  
5 the obligation, expenditure, receipt, or use of State [funds] RESOURCES.

6 2. The Legislative Auditor shall determine whether an  
7 investigation shall be conducted in conjunction with an audit undertaken in  
8 accordance with this [paragraph] SUBSECTION or separately.

9 [(3)] (5) If, on request of the Comptroller, the Joint Audit Committee so  
10 directs, the Office of Legislative Audits shall audit or review a claim that has been  
11 presented to the Comptroller for payment of an expenditure or disbursement and that  
12 is alleged to have been made by or for an officer or unit of the State government.

13 [(4)] (6) The Office of Legislative Audits shall conduct an audit or review  
14 to determine the accuracy of information about or procedures of a unit of the State  
15 government, as directed by the Joint Audit Committee or the Executive Director.

16 (b) If the General Assembly, by resolution, or the Joint Audit Committee so  
17 directs, the Office of Legislative Audits shall conduct an audit or review of a  
18 corporation or association to which the General Assembly has appropriated money or  
19 that has received funds from an appropriation from the State Treasury.

20 (c) The Office of Legislative Audits may audit any county officer or unit that  
21 collects State taxes.

22 (d) [The Office of Legislative Audits shall audit the expenditures or tax  
23 revenues of the Maryland-National Capital Park and Planning Commission relating  
24 to Prince George's County, by request of:

25 (1) the Joint Audit Committee of the General Assembly;

26 (2) the Prince George's County Executive; or

27 (3) the Prince George's County Council.

28 (e)] (1) The Office of Legislative Audits shall review any audit report  
29 prepared under the authority of:

30 (i) Article 19, § 40 of the Code, with respect to a county, municipal  
31 corporation, or taxing district; or

32 (ii) § 16-315 of the Education Article, with respect to a community  
33 college.

34 (2) The results of any review made by the Office of Legislative Audits  
35 under paragraph (1) of this subsection shall be reported as provided in § 2-1224 of  
36 this subtitle.

1 [(f)] (E) (1) Between July 1, 2004 and June 30, 2010, the Office of  
2 Legislative Audits shall conduct an audit of each local school system to evaluate the  
3 effectiveness and efficiency of the financial management practices of the local school  
4 system.

5 (2) The audits may be performed concurrently or separately.

6 (3) [The employees of the Office of Legislative Audits shall have access  
7 to and may inspect the records, including those that are confidential by law, of any  
8 local school system to perform the audits authorized under this section or pursuant to  
9 a request for information as provided in § 5-114(e)(4) of the Education Article.

10 (4)] The Office of Legislative Audits shall provide information regarding  
11 the audit process to the local school system before the audit is conducted.

12 [(5) In addition to the requirements of § 2-1224 of this subtitle, each  
13 audit shall be distributed to the House Ways and Means Committee and the Joint  
14 Committee on the Management of Public Funds.]

15 2-1221.

16 (a) A fiscal/compliance audit conducted by the Office of Legislative Audits  
17 shall include:

18 (1) [an examination of] EXAMINING financial transactions and records  
19 and internal controls;

20 (2) [an evaluation of] EVALUATING compliance with applicable laws and  
21 regulations;

22 (3) [an audit of] EXAMINING electronic data processing operations; and

23 (4) [an evaluation of] EVALUATING compliance with applicable laws and  
24 regulations relating to the acquisition of goods and services from Maryland  
25 Correctional Enterprises.

26 (b) [(1) Performance audits shall be conducted when authorized by the  
27 Legislative Auditor, when directed by the Joint Audit Committee or the Executive  
28 Director, or when otherwise required by law.

29 (2)] A performance audit conducted by the Office of Legislative Audits  
30 may include:

31 [(i)] (1) [a review of] EVALUATING the efficiency, effectiveness,  
32 and economy with which resources are used;

33 [(ii)] (2) [a review to determine] DETERMINING whether desired  
34 program results are achieved; and

35 [(iii)] (3) [a review to determine] DETERMINING the reliability of  
36 performance measures, as defined in § 3-1001(g) of the State Finance and

1 Procurement Article, identified in the managing for results agency strategic plan  
2 developed under § 3-1002(c) of the State Finance and Procurement Article.

3 (c) The purpose of financial statement audits conducted by the Office of  
4 Legislative Audits shall be to express an opinion regarding the fairness of the  
5 presentation of a unit's financial statements.

6 (d) The audits referred to in subsections (a), (b), and (c) of this section shall be  
7 conducted in accordance with generally accepted government auditing standards.

8 (e) [A review may be conducted by the Office of Legislative Audits when the  
9 objectives of the work to be performed can be satisfactorily fulfilled without  
10 conducting an audit as prescribed in subsection (a), (b), or (c) of this section.

11 (f) (1) Upon approval of the Joint Audit Committee, the Office of Legislative  
12 Audits shall develop and use a rating system THAT IS BASED ON THE RESULTS OF A  
13 FISCAL/COMPLIANCE AUDIT [for determining] TO DETERMINE an overall evaluation  
14 of a unit's financial transactions, records, and internal controls and compliance with  
15 applicable laws and regulations as a means of comparing the various units of State  
16 government.

17 (2) When an evaluation is issued, it shall be provided to the unit and  
18 shall be available to the Joint Audit Committee and the Budget Committees of the  
19 Maryland General Assembly.

20 2-1222.

21 (a) An [audit or review] EXAMINATION conducted by the Office of Legislative  
22 Audits shall generally be made at the offices of the State unit, county officer or unit,  
23 corporation, [or] association, OR LOCAL SCHOOL SYSTEM that is subject to [audit or  
24 review] EXAMINATION.

25 (b) (1) If considered appropriate and after consultation with the [State]  
26 unit OR BODY being [audited or reviewed] EXAMINED, the Legislative Auditor may  
27 authorize all or a portion of an [audit or review] EXAMINATION to be conducted at the  
28 offices of the Office of Legislative Audits.

29 (2) Before the original or only copy of any record is removed from the  
30 State unit's premises, the prior approval of the State unit for the removal is required.  
31 2-1223.

32 (a) (1) Except as prohibited by the federal Internal Revenue Code, during an  
33 [audit or review] EXAMINATION, the employees OR AUTHORIZED REPRESENTATIVES  
34 of the Office of Legislative Audits shall have access to and may inspect the records,  
35 including those that are confidential by law, of any unit of the State government or of  
36 a person or other body receiving State funds, with respect to any matter under the  
37 jurisdiction of the Office of Legislative Audits.

1           (2)     In conjunction with an [audit or review] EXAMINATION authorized  
2 under [§ 2-1220 of] this subtitle, the access required by paragraph (1) of this  
3 subsection shall include the records of contractors and subcontractors that perform  
4 work under State contracts.

5           (3)     THE EMPLOYEES OR AUTHORIZED REPRESENTATIVES OF THE  
6 OFFICE OF LEGISLATIVE AUDITS SHALL HAVE ACCESS TO AND MAY INSPECT THE  
7 RECORDS, INCLUDING THOSE THAT ARE CONFIDENTIAL BY LAW, OF ANY LOCAL  
8 SCHOOL SYSTEM TO PERFORM THE AUDITS AUTHORIZED UNDER § 2-1220 OF THIS  
9 SUBTITLE OR IN ACCORDANCE WITH A REQUEST FOR INFORMATION AS PROVIDED IN  
10 § 5-114(E) OF THE EDUCATION ARTICLE.

11         (b)     Each officer or employee of the unit or body that is subject to [audit or  
12 review] EXAMINATION shall provide any information that the Legislative Auditor  
13 determines to be needed for the [audit or review] EXAMINATION OF THAT UNIT OR  
14 BODY, OR OF ANY MATTER UNDER THE AUTHORITY OF THE OFFICE OF LEGISLATIVE  
15 AUDITS, including information that otherwise would be confidential under any  
16 provision of law.

17         (c)     (1)     The Legislative Auditor may issue process that requires an official  
18 who is subject to [audit or review] EXAMINATION to produce a record that is needed  
19 for the [audit or review] EXAMINATION.

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

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

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

24           (5)     If a person fails to comply with process issued under this subsection  
25 or fails to provide information that is requested during an [audit or review]  
26 EXAMINATION, a circuit court may issue an order directing compliance with the  
27 process or compelling that the information requested be provided.

28 2-1224.

29         (a)     Except with the written approval of the Legislative Auditor, an employee  
30 OR AUTHORIZED REPRESENTATIVE of the Office of Legislative Audits shall submit  
31 any report of findings only to the Legislative Auditor.

32         (b)     (1)     On the completion of each [audit or review] EXAMINATION, the  
33 Legislative Auditor shall submit a full and detailed report to the Joint Audit  
34 Committee.

35           (2)     A report shall include:

36                 (i)     the findings;

1 (ii) any appropriate recommendations for changes in record  
2 keeping or in other conduct of the unit or body [audited or reviewed] THAT IS THE  
3 SUBJECT OF THE REPORT; and

4 (iii) any response of [the] THAT unit or body [audited or reviewed],  
5 subject to procedures approved by the Joint Audit Committee.

6 (c) The Legislative Auditor shall send a copy of the report to:

7 (1) the President of the Senate and the Speaker of the House of  
8 Delegates;

9 (2) the Chairmen of the Senate Budget and Taxation and House  
10 Appropriations Committees;

11 (3) members of the General Assembly, subject to § 2-1246 of this subtitle;

12 (4) the Governor;

13 (5) the Comptroller;

14 (6) the State Treasurer;

15 (7) the Attorney General;

16 (8) the unit OR BODY that [has been audited or reviewed] IS THE  
17 SUBJECT OF THE REPORT;

18 (9) the Secretary of Budget and Management;

19 (10) the Executive Director; and

20 (11) any other person whom the Joint Audit Committee specifies.

21 (D) IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (C) OF THIS  
22 SECTION, EACH REPORT OF A LOCAL SCHOOL SYSTEM SHALL BE DISTRIBUTED TO  
23 THE CHAIR OF THE HOUSE WAYS AND MEANS COMMITTEE AND THE COCHAIRS OF  
24 THE JOINT COMMITTEE ON THE MANAGEMENT OF PUBLIC FUNDS.

25 [(d)] (E) After the expiration of any period that the Joint Audit Committee  
26 specifies, a report of the Legislative Auditor is available to the public under §§ 10-602  
27 and 10-611 through 10-628 of this article.

28 [(e)] (F) (1) The Legislative Auditor shall review each unit's response and  
29 advise the unit of the results of the review. The Legislative Auditor shall advise the  
30 Joint Audit Committee when:

31 (i) a unit does not make a response to a recommendation;

32 (ii) a unit does not indicate action to be taken in response to a  
33 recommendation;



1 (iii) a unit has not taken the action the unit indicated in its response  
2 to a recommendation;

3 (iv) a unit requests a waiver from a recommendation; or

4 (v) the response by the unit is not considered appropriate to carry  
5 out the recommendation.

6 (2) The Executive Director or the Joint Audit Committee may direct the  
7 Legislative Auditor to undertake a review to determine the extent to which action has  
8 been taken by a unit to implement a report recommendation.

9 (3) With respect to findings and recommendations of a fiscal/compliance  
10 nature, the Committee may recommend to the Governor and the Comptroller that the  
11 unit take the corrective action the unit indicates would be taken or take action to  
12 correct the findings in the report or the Committee may grant a waiver from the  
13 recommended action.

14 (4) Within 45 days after receipt of the recommendation the Governor  
15 shall advise the Committee as to the action taken with respect to the  
16 recommendation.

17 (5) Without concurrence of the Comptroller, the Committee may not  
18 waive a recommendation of the Legislative Auditor with respect to fiscal and  
19 financial record keeping, a uniform system of accounting, or the submission of fiscal  
20 and financial reports by the units.

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

24 (7) THE LEGISLATIVE AUDITOR SHALL REVIEW EACH LOCAL SCHOOL  
25 SYSTEM'S RESPONSE TO AN AUDIT CONDUCTED UNDER § 2-1220(E) OF THIS SUBTITLE  
26 AND ADVISE THE LOCAL SCHOOL SYSTEM OF THE RESULTS OF THE REVIEW. THE  
27 LEGISLATIVE AUDITOR SHALL ADVISE THE JOINT AUDIT COMMITTEE WHEN A LOCAL  
28 SCHOOL SYSTEM:

29 (I) DOES NOT MAKE A RESPONSE TO A RECOMMENDATION;

30 (II) DOES NOT INDICATE ACTION TO BE TAKEN IN RESPONSE TO A  
31 RECOMMENDATION;

32 (III) HAS NOT TAKEN THE ACTION THE LOCAL SCHOOL SYSTEM  
33 INDICATED IN ITS RESPONSE TO A RECOMMENDATION; OR

34 (IV) RESPONDS IN A MANNER THAT IS NOT CONSIDERED  
35 APPROPRIATE TO CARRY OUT THE RECOMMENDATION.

36 (8) THE EXECUTIVE DIRECTOR OR THE JOINT AUDIT COMMITTEE MAY  
37 DIRECT THE LEGISLATIVE AUDITOR TO UNDERTAKE A REVIEW TO DETERMINE THE

1 EXTENT TO WHICH ACTION HAS BEEN TAKEN BY A LOCAL SCHOOL SYSTEM TO  
2 IMPLEMENT A REPORT RECOMMENDATION.

3 (9) WITH RESPECT TO FINDINGS AND RECOMMENDATIONS MADE TO A  
4 LOCAL SCHOOL SYSTEM, THE JOINT AUDIT COMMITTEE MAY MAKE  
5 RECOMMENDATIONS TO THE GOVERNOR, STATE SUPERINTENDENT OF SCHOOLS,  
6 THE LOCAL SCHOOL GOVERNING BOARD, OR LOCAL SCHOOL OFFICIALS AFTER  
7 REVIEWING A LOCAL SCHOOL SYSTEM'S RESPONSE TO A RECOMMENDED ACTION.

8 2-1225.

9 (a) (1) In addition to the [report] REPORTS under § 2-1224 of this subtitle,  
10 the Legislative Auditor shall report an apparent violation of any law on use of State  
11 funds by the unit of the State government or other body that is [audited or reviewed]  
12 EXAMINED.

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

14 (i) the Joint Audit Committee;

15 (ii) the Executive Director;

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

17 (iv) the Office of the Attorney General.

18 (b) (1) If the Legislative Auditor discovers any alleged criminal violation by  
19 a person during the course of an [audit, review, or investigation] EXAMINATION, the  
20 Legislative Auditor shall report the alleged violation to the Attorney General and an  
21 appropriate State's Attorney.

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

24 (3) Unless the Attorney General or State's Attorney decides to prosecute  
25 an alleged criminal violation reported under this subsection, the Attorney General  
26 and State's Attorney shall keep the report of the Legislative Auditor under this  
27 subsection confidential.

28 (4) The Attorney General may investigate and prosecute any alleged  
29 criminal violation reported under this subsection and has all the powers and duties of  
30 a State's Attorney, including the use of a grand jury in any county or Baltimore City,  
31 to investigate and prosecute the alleged violation.

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

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

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

- 1 (i) the Joint Audit Committee;
- 2 (ii) the Executive Director;
- 3 (iii) the unit or body that is the subject of the report; and
- 4 (iv) the Legislative Auditor.

5 2-1226.

6 (a) Except as provided in § 2-1225 of this subtitle and subsection (b) of this  
7 section, information that an employee OR AUTHORIZED REPRESENTATIVE of the  
8 Office of Legislative Audits obtains during an [audit or review] EXAMINATION:

- 9 (1) is confidential; and
- 10 (2) may not be disclosed except to another employee OR AUTHORIZED  
11 REPRESENTATIVE of the Office of Legislative Audits.

12 (b) The Legislative Auditor may authorize the disclosure of information  
13 obtained during an [audit or review] EXAMINATION only to the following:

- 14 (1) another employee of the Department, with the approval of the  
15 Executive Director;
- 16 (2) federal, State, or local officials, or their auditors, who provide  
17 evidence to the Legislative Auditor that they are performing investigations, studies,  
18 or audits related to that same [audit or review] EXAMINATION and who provide  
19 justification for the specific information requested; or
- 20 (3) the Joint Audit Committee, if necessary to assist the Committee in  
21 reviewing a report issued by the Legislative Auditor.

22 (c) Except as provided in § 2-1225 of this subtitle, if information that an  
23 employee OR AUTHORIZED REPRESENTATIVE obtains during an [audit or review]  
24 EXAMINATION also is confidential under another law, the employee, AUTHORIZED  
25 REPRESENTATIVE, or the Legislative Auditor may not include in a report or otherwise  
26 use the information in any manner that discloses the identity of any person who is the  
27 subject of the confidential information.

28 2-1227.

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

- 31 (1) fails to comply promptly with process that the Legislative Auditor  
32 issues under this Part IV of this subtitle; or
- 33 (2) violates any provision of § 2-1224(a) or § 2-1226 of this subtitle.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2 October 1, 2006.