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4

As Engrossed: H3/17/21

A Bill

HOUSE BILL 1559

5 By: Representative M. Gray
6 By: Senator J. Sturch
7

For An Act To Be Entitled

9 AN ACT TO MODIFY THE AUDITS AND DUTIES OF THE
10 INTERNAL AUDIT SECTION; TO GRANT THE INTERNAL AUDIT
11 SECTION SUBPOENA POWER; TO REQUIRE UNIFORMITY IN ALL
12 AUDITS CONDUCTED IN THE EXECUTIVE BRANCH; AND FOR
13 OTHER PURPOSES.
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Subtitle

16 TO MODIFY THE AUDITS AND DUTIES OF THE
17 INTERNAL AUDIT SECTION; TO GRANT THE
18 INTERNAL AUDIT SECTION SUBPOENA POWER;
19 AND TO REQUIRE UNIFORMITY IN ALL AUDITS
20 CONDUCTED IN THE EXECUTIVE BRANCH.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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26 SECTION 1. Arkansas Code § 19-4-105 is repealed.

27 ~~19-4-105. Continuing studies and investigations—Duties of Secretary~~
28 ~~of the Department of Inspector General and Internal Audit Section—Exemption~~
29 ~~of internal audit documentation from Freedom of Information Act of 1967.~~

30 ~~(a) The Secretary of the Department of Inspector General is directed~~
31 ~~to make continuing studies and investigations of the operation of state~~
32 ~~agencies and to make recommendations to the General Assembly, the Legislative~~
33 ~~Council, and the Governor about improvements which should be made in order~~
34 ~~to:~~

35 ~~(1) Safeguard against excessive expenditures of appropriations~~
36 ~~and funds;~~



1 ~~(2) Promote economy, efficiency, and control in the operation of~~
2 ~~state agencies; and~~

3 ~~(3) Accomplish the purposes of this chapter as intended by the~~
4 ~~General Assembly.~~

5 ~~(b) The Internal Audit Section created under the Department of Finance~~
6 ~~and Administration by Governor's Executive Order 99-08 and transferred to the~~
7 ~~Department of Inspector General by a cabinet level department transfer under~~
8 ~~§ 25-43-1002 shall conduct its audits using the suggested standards for the~~
9 ~~professional practice of internal auditing as adopted by the Institute of~~
10 ~~Internal Auditors.~~

11 ~~(c) The Internal Audit Section shall:~~

12 ~~(1) Review the financial and operating controls and the~~
13 ~~transactions of state agencies to determine the level of conformity with~~
14 ~~established laws, standards, rules, and procedures;~~

15 ~~(2) Review the various functions within an enterprise to~~
16 ~~appraise the efficiency and economy of operations and the effectiveness with~~
17 ~~which those functions achieve the stated objectives, including without~~
18 ~~limitation a review of established internal control activities;~~

19 ~~(3) Investigate reported occurrences of fraud, embezzlement,~~
20 ~~theft, waste, abuse, or mismanagement of state resources;~~

21 ~~(4) Recommend controls to prevent occurrences of fraud,~~
22 ~~embezzlement, theft, waste, abuse, or mismanagement of state resources;~~

23 ~~(5) Assist state agencies to resolve areas of concern;~~

24 ~~(6) Assist state agencies in establishing appropriate internal~~
25 ~~controls that will prevent errors or irregularities;~~

26 ~~(7) Provide objective analysis, appraisals, and recommendations~~
27 ~~concerning the activities it reviews; and~~

28 ~~(8) Perform other functions as directed by the Governor or the~~
29 ~~secretary.~~

30 ~~(d) After an audit is completed, the Internal Audit Section shall file~~
31 ~~a written final report concerning the actions and determinations made under~~
32 ~~this section with:~~

33 ~~(1) The secretary;~~

34 ~~(2) The Governor;~~

35 ~~(3) The State Board of Finance; and~~

36 ~~(4) Arkansas Legislative Audit.~~

1 ~~(e) Employees of the Internal Audit Section shall:~~

2 ~~(1) Be employed by the secretary as employees of the Department~~
3 ~~of Inspector General; and~~

4 ~~(2) Serve at the pleasure of the secretary.~~

5 ~~(f)(1) All internal audit documentation, including notes, memoranda,~~
6 ~~preliminary drafts of audit reports, and other data gathered in the~~
7 ~~preparation of internal audit reports by the Internal Audit Section, are~~
8 ~~privileged and confidential and are exempt from the Freedom of Information~~
9 ~~Act of 1967, § 25-19-101 et seq., except as provided in subdivision (f)(2) of~~
10 ~~this section.~~

11 ~~(2)(A) The exemption shall not apply to completed internal~~
12 ~~audits of the Internal Audit Section after a final report of the internal~~
13 ~~audit has been presented to:~~

14 ~~(i) The secretary;~~

15 ~~(ii) The Governor or the Governor's designee;~~

16 ~~(iii) The board; or~~

17 ~~(iv) Arkansas Legislative Audit.~~

18 ~~(B) The final report and copies of any supporting~~
19 ~~documentation shall then be open to public inspection and copying, except for~~
20 ~~documents that are exempt from disclosure under other law.~~

21 ~~(g)(1) The Internal Audit Section shall conduct an annual project~~
22 ~~review and efficiency study of the Arkansas Department of Transportation to~~
23 ~~include without limitation a review of the processes, procedures, procurement~~
24 ~~processes, projects, appeals procedures and expenditures.~~

25 ~~(2) The results of a study under this section shall be reported~~
26 ~~to the Legislative Council no later than October 1 of each year, with the~~
27 ~~first report to be submitted by October 1, 2021.~~

28
29 SECTION 2. Arkansas Code § 25-43-1002(a), concerning the state
30 entities transferred to the Department of Inspector General, is amended to
31 read as follows:

32 (a) The administrative functions of the following state entities are
33 transferred to the Department of Inspector General under a cabinet-level
34 transfer:

35 (1) The Arkansas Fair Housing Commission, created under § 16-
36 123-303;

1 (2) ~~The Internal Audit Section, created under § 19-4-105~~ Office
2 of Internal Audit, created under § 25-43-1004; and

3 (3) The Office of Medicaid Inspector General, created under §
4 20-77-2503.

5
6 SECTION 3. Arkansas Code Title 25, Chapter 43, Subchapter 10, is
7 amended to add additional sections to read as follows:

8 25-43-1004. Office of Internal Audit – Audits and duties.

9 (a) The Office of Internal Audit is created within the Department of
10 Inspector General.

11 (b) As used in this section, "covered entities" means a department,
12 agency, board, commission, division, institution, or other office of the
13 state government located in the executive branch.

14 (c) The Office of Internal Audit may audit and investigate covered
15 entities or transactions of covered entities, and provide consultation
16 activities at the request of covered entities.

17 (d) Unless otherwise subject to audits by statutes, this subchapter
18 does not apply to:

19 (1) Members of the General Assembly;

20 (2) Employees of the legislative branch;

21 (3) Justices of the Supreme Court, judges of the Court of
22 Appeals, or judges of inferior courts;

23 (4) Employees of the judicial branch of the state government;

24 (5) Constitutional offices or departments and employees of
25 constitutional offices or departments; or

26 (6) State-supported colleges and universities and employees of
27 state-supported colleges and universities.

28 (e) The Office of Internal Audit may:

29 (1) Audit:

30 (A) The financial and operating controls and the
31 transactions of covered entities to determine the level of conformity with
32 established laws, standards, rules, and procedures; and

33 (B) The various functions within covered entities to
34 appraise the efficiency and economy of operations and the effectiveness with
35 which the functions achieve operational, reporting, and compliance
36 objectives, including without limitation a review of established internal

1 control activities;

2 (2) Investigate reported or identified occurrences of fraud,
3 embezzlement, theft, waste, abuse, or mismanagement of state resources;

4 (3) Consult with covered entities to:

5 (A) Resolve areas of concern; and

6 (B) Establish appropriate internal controls to prevent
7 errors or irregularities;

8 (4) Coordinate control self-assessments of covered entities
9 biennially;

10 (5)(A) Conduct an annual project review and efficiency study of
11 the Arkansas Department of Transportation, including without limitation a
12 review of processes, procedures, procurement, projects, appeals, and
13 expenditures.

14 (B) The results of the study under subdivision (e)(5)(A)
15 of this section shall be reported to the Legislative Council no later than
16 October 1 of each year with the first report to be submitted on or before
17 October 1, 2023; and

18 (6) Perform other functions consistent with this section as
19 directed by the Governor or Secretary of the Department of Inspector General.

20 (f)(1) An audit by the Office of Internal Audit means an engagement in
21 which evidence is assessed to provide opinions or conclusions regarding the
22 operations, functions, processes, systems, or other subject matter of covered
23 entities.

24 (2) The Office of Internal Audit may provide audits such as
25 performance auditing, operation auditing, investigations, and management
26 requested audits.

27 (3) The Office of Internal Audit shall determine the nature and
28 scope of the audit.

29 (4) An official written report is required at the completion of
30 each audit or investigation performed by the Office of Internal Audit.

31 (5) When a written report is prepared by the Office of Internal
32 Audit at the conclusion of the audit or investigation, the written report
33 shall be distributed to:

34 (A) The Secretary of the Department of Inspector General;

35 (B) The office of the Governor;

36 (C) Arkansas Legislative Audit;

1 (D) The covered entity; and
2 (E) Other appropriate parties as determined by the Office
3 of Internal Audit.

4 (g)(1) The Office of Internal Audit may perform consulting services
5 that are advisory in nature and generally performed at the specific request
6 of a covered entity, including without limitation system design, analysis of
7 internal control or business process design, counsel, advice, facilitation,
8 training, and participation on committees.

9 (2) Communications relating to consulting services may be
10 determined by the engagement client in the form of oral discussions,
11 memorandums, letters, or a written report as needed.

12 (h)(1) The Office of Internal Audit shall not be assigned duties or
13 engage in any activities that the Office of Internal Audit would not normally
14 be expected to audit.

15 (2) The Office of Internal Audit shall adhere to the
16 International Professional Practices Framework of the Institute of Internal
17 Auditors and the Implementation Guides, Practice Guides, and Position Papers
18 of the Institute of Internal Auditors.

19 (i)(1) A covered entity shall cooperate fully with the Office of
20 Internal Audit.

21 (2) The Office of Internal Audit, with strict accountability for
22 confidentiality and safeguarding records and information, may have full,
23 free, and unrestricted access to all records, physical properties, and
24 personnel of covered entities.

25 (3) The Office of Internal Audit shall have access to all
26 records, information, electronic or written data, reports, plans,
27 projections, matters, contracts, memoranda, correspondence, and any other
28 materials of a covered entity and shall be deemed to be an authorized
29 representative and agent of each covered entity for the purposes of:

30 (A) Examining and investigating the records of all
31 contractors, subcontractors, grantees, or subgrantees of covered agencies,
32 that relate to contracts, subcontracts, grants, or subgrants with covered
33 entities; and

34 (B) Obtaining access to any records of a covered entity or
35 current or former employee of a covered entity in the possession of a third
36 party, including without limitation bank account records, when those records

1 are related to an ongoing investigation or audit.

2 (j)(1) In the performance of the Office of Internal Audit's duties,
3 the Office of Internal Audit may ascertain, inspect, confirm, copy, audit,
4 and examine any financial records, documents, electronic data, or accounts of
5 any financial institution, business, or nonprofit entity or any other person
6 or entity regarding transactions or relationships with a covered entity.

7 (2) A financial institution, business, nonprofit entity, or any
8 other person or entity is not liable for making available to the Office of
9 Internal Audit any of the information required under this section.

10 (3) Records that are exempt from public disclosure of the
11 entity's custodian are exempt from public disclosure of the Office of
12 Internal Audit.

13 (k)(1) In connection with an audit or investigation of any covered
14 state entity or an audit related to any transactions or relationships with
15 covered entities, the Office of Internal Audit may issue a subpoena for
16 records or issue a summons and subpoena to any person whose testimony may be
17 deemed necessary to appear before the Office of Internal Audit at a time and
18 place and with papers, files, and records named in the summons or subpoena.

19 (2) In conducting any audit or examination, the Office of
20 Internal Audit may administer oaths.

21 (3) The subpoena under subdivision (k)(1) of this section may be
22 served by certified mail, return receipt requested, at the addressee's
23 residence or business address or in person, by:

24 (A) Representatives of the Office of Internal Audit;

25 (B) The sheriff of the county in which the person, books,
26 records, or documents subpoenaed are located; or

27 (C) The Division of Arkansas State Police.

28 (4) A sheriff serving a subpoena under subdivision (k)(3) of
29 this section may receive the same fees for the service of process as provided
30 by law for service of process issued by the circuit court.

31 (l)(1) If a person refuses to obey a subpoena issued by the Office of
32 Internal Audit, upon application by the Office of Internal Audit, the circuit
33 court of the county in which the Office of Internal Audit is domiciled may
34 issue an order to the person requiring the person to appear before the court
35 to show cause as to why an order shall not be issued ordering such person to
36 obey the subpoena, and the person may be adjudged in contempt of court.

1 (2) If a person placed under oath or subpoenaed by the Office of
2 Internal Audit knowingly gives false testimony that is material to an audit,
3 that person shall be deemed guilty of perjury upon conviction by a court of
4 competent jurisdiction.

5 (m)(1) Except as provided in subdivision (m)(2) of this section, all
6 internal audit documentation, including notes, memoranda, preliminary drafts
7 of audit reports, and other data gathered in the preparation of internal
8 audit reports by the Office of Internal Audit, are privileged and
9 confidential and are exempt from the Freedom of Information Act of 1967, §
10 25-19-101 et seq.

11 (2)(A) The exemption from the Freedom of Information Act of
12 1967, § 25-19-101 et seq., granted to the privileged and confidential
13 materials described in subdivision (m)(1) of this section does not apply to
14 completed internal audits of the Office of Internal Audit after a final
15 report of the internal audit has been presented to:

16 (i) The Secretary of the Department of Inspector
17 General;

18 (ii) The Governor or the Governor's designee;

19 (iii) Arkansas Legislative Audit; and

20 (iv) The covered entity.

21 (B) The final report and copies of any supporting
22 documentation are open to public inspection and copying, except for documents
23 that are exempt from disclosure under other law, unsubstantiated allegations,
24 or information included in control self-assessments.

25 (n)(1) This section does not authorize the Office of Internal Audit to
26 subpoena, compel the production of, or otherwise obtain any records or
27 documents in the possession of Arkansas Legislative Audit, including without
28 limitation work papers, drafts of reports, supporting documentation,
29 communications with third parties, electronic data, or fraud interviews.

30 (2) The Office of Internal Audit is subject to subpoenas issued
31 by the Legislative Joint Auditing Committee under § 10-3-411 or the
32 Legislative Auditor consistent with § 10-4-421, including all penalties
33 contained in those laws.

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35 25-43-1005. Executive branch internal audit functions.

36 (a) An executive branch department that has an existing internal audit

1 function or creates an internal audit function shall adhere to the
2 International Professional Practices Framework of the Institute of Internal
3 Auditors, including without limitation obtaining an external quality
4 assurance review.

5 (b)(1) The Chief Audit Executive of each executive branch department
6 shall comply with all requests of the Office of Internal Audit including
7 providing copies of annual internal audit plans, copies of all reports and
8 correspondence with their respective agencies on a quarterly basis, and
9 copies of external quality assurance reviews.

10 (2) The Chief Audit Executive of each executive branch
11 department shall have unrestricted access to the Director of the Office of
12 Internal Audit.

13 (c)(1)(A) All activities of other executive branch department internal
14 audit functions shall be reported to the Office of Internal Audit and
15 Arkansas Legislative Audit.

16 (B) Activities reported to the Office of Internal Audit
17 may be presented for consideration of further review by the Governor.

18 (2) Other executive branch department internal audit functions shall
19 report functionally to an audit committee of their governing boards.

20 (3) If a governing board does not exist for the executive branch
21 department, the internal audit function shall report to the highest authority
22 in the department charged with governance of the executive branch department.

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24
25 /s/M. Gray
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28 **APPROVED: 4/12/21**
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