

# Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES

## Chapter 11: OFFICE OF THE STATE AUDITOR

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## Maine Revised Statutes

### Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES

#### Chapter 11: OFFICE OF THE STATE AUDITOR

##### §241. STATE AUDITOR; SALARY

The State Auditor is the head of the Office of the State Auditor. The State Auditor must be a certified public accountant or a college graduate with not less than 6 years of experience as a professional accountant or auditor, including not less than 5 years of auditing experience, of which not less than 4 years must have been in a supervisory capacity. The State Auditor must be elected by the Legislature by a joint ballot of the Senators and Representatives in convention and holds office for a term of 4 years or until a successor is elected and qualified. The State Auditor shall exercise such powers and perform such duties as are set forth in this chapter. In case the office of State Auditor becomes vacant during a period when the Legislature is not in session, the appointment of a person to fill such vacancy must be made immediately by the President of the Senate or if that office is vacant, by the Speaker of the House, and the person appointed holds that office until such time as the Legislature meets in regular or special session, and either confirm the appointment of the person or chooses another person to fill the office during the unexpired term. [ 2013, c. 16, §1 (AMD) . ]

If a person elected to the office of State Auditor is not qualified as, or has not successfully completed or passed the examination for, a certified public accountant, certified information systems auditor or certified internal auditor at the time of election and fails to become so qualified within 9 months of being sworn into office, as required by section 242, that person may no longer serve as State Auditor and is ineligible for reelection by the same Legislature and the office of State Auditor is deemed vacant. [ 2015, c. 44, §3 (AMD) . ]

##### SECTION HISTORY

1965, c. 510, §2 (AMD). 1967, c. 476, §10 (AMD). 1969, c. 504, §7 (AMD). 1973, c. 792, §1 (AMD). 1997, c. 516, §1 (AMD). 2013, c. 16, §1 (AMD). 2015, c. 44, §3 (AMD).

##### §241-A. TRANSITION PERIOD

In order to provide for an orderly transition following the quadrennial election of the State Auditor, the State Auditor-elect may not take the oath of office or otherwise qualify for the office for a period of no less than 30 days following that election. [ 1989, c. 857, §15 (AMD) . ]

##### SECTION HISTORY

1983, c. 65, §3 (NEW). 1989, c. 857, §15 (AMD).

##### §242. ORGANIZATION; DEPUTY

The Office of the State Auditor must be organized in the manner the State Auditor considers best suited to the accomplishment of its functions. The office may have those auditors, assistants and employees as the State Auditor may require, but they are subject to the Civil Service Law. [ 2013, c. 16, §2 (AMD) . ]

Any person elected to the position of State Auditor or any person permanently employed by the Office of the State Auditor as deputy auditor, director of audits or assistant director of audits must be currently qualified as or have successfully completed or passed the examination for a certified public accountant, certified information systems auditor or certified internal auditor. Persons not so qualified may be employed in these audit supervisory positions on a temporary basis not to exceed 9 months. [ 2015, c. 44, §4 (AMD) . ]

In the event of a vacancy in the office of State Auditor because of death, resignation, removal or other cause, the deputy auditor shall perform the duties of the office until a State Auditor has been appointed in conformity with section 241 and has been duly qualified. In the event of absence or disability of the State Auditor, the deputy auditor shall likewise perform the duties of the office during the State Auditor's absence. [2013, c. 16, §2 (AMD).]

## SECTION HISTORY

1985, c. 785, §B12 (AMD). 1987, c. 802, §§1,2 (AMD). 2013, c. 16, §2 (AMD). 2015, c. 44, §4 (AMD).

**§242-A. FRAUD INVESTIGATION DIVISION***(REPEALED)*

## SECTION HISTORY

P&SL 1971, c. 179, §J1 (NEW). 1973, c. 788, §14 (AMD). 1975, c. 715, §2 (RP).

**§242-B. PROGRAM REVIEW AND EVALUATION DIVISION***(REPEALED)*

## SECTION HISTORY

1973, c. 792, §3 (NEW). 1975, c. 591, (AMD). 1977, c. 579, §B1 (RP).

**§243. POWERS AND DUTIES**

The Office of the State Auditor has authority: [2013, c. 16, §3 (AMD).]

**1. Audit.** To audit all accounts and other financial records of State Government or any department or agency of State Government, including the judiciary and the Executive Department of the Governor, except the Governor's Expense Account, and to report annually on this audit, and at such other times as the Legislature may require;

[ 1999, c. 208, §1 (AMD) .]

**2. Counties.** To perform annual audits of all accounts and other financial records of the several counties or any departments or agencies thereof, the expenses of such audits to be paid by the counties.

[ 2003, c. 450, §1 (AMD) .]

**3. Municipalities.** To perform audits for cities, towns and villages as required by Title 30-A, sections 5821 to 5823. The rate charged by the office to perform audits must include the proportional amount of the State Auditor's duties and be used to offset the General Fund costs of the State Auditor;

[ 2013, c. 16, §4 (AMD) .]

**3-A. Municipal cost component.** No later than February 1st following the end of each fiscal year, to ensure that an annual audit of the municipal cost component and the Unorganized Territory Education and Services Fund in Title 36, chapter 115 is conducted. The expenses of these services are part of the municipal cost component and are paid out of the Unorganized Territory Education and Services Fund;

[ 1999, c. 208, §1 (AMD) .]

**4. Accounting systems; probation officers.**

[ 1999, c. 208, §1 (RP) .]

**4-A. Audit for District Court.**

[ 1979, c. 124, §23 (RP) .]

**5. Postaudit.**

[ 1983, c. 556, §1 (RP) .]

**5-A. Budget and program review.** To review and study departmental budgets and capital programs for better and efficient management of State Government;

[ 1999, c. 208, §1 (AMD) .]

**5-B. Dedicated funds.** To review and study expenditures of the dedicated funds of independent boards and commissions;

[ 1999, c. 208, §1 (AMD) .]

**6. Staff agency.** To serve as a staff agency to the Legislature, or any of its committees, or to the Governor in making investigations of any phase of the State's finances;

[ 1999, c. 208, §1 (AMD) .]

**7. Reports.** To report its findings, with recommendations, on any review or study to the Legislature;

[ 1999, c. 208, §1 (AMD) .]

**8. Audit.** To perform audits of all accounts and financial records of any organization, institution or other entity receiving or requesting an appropriation or grant from State Government and to issue reports on such audits at such times as the Legislature or the State Auditor may require; and

[ 1999, c. 208, §1 (AMD) .]

**9. Single audit.** To conduct financial and compliance audits of financial transactions and accounts kept by or for all state agencies subject to the Single Audit Act Amendments of 1996, 31 United States Code, Sections 7501 to 7507 (1998). The audits must be conducted in accordance with generally accepted governmental auditing standards.

[ 1999, c. 208, §1 (NEW) .]

## SECTION HISTORY

1965, c. 486, (AMD). 1967, c. 427, §2 (AMD). 1967, c. 494, §4 (AMD). 1967, c. 544, §9 (AMD). 1969, c. 504, §8 (AMD). 1971, c. 145, §§1,2 (AMD). 1973, c. 537, §2 (AMD). 1975, c. 497, §3 (AMD). 1977, c. 380, §B2 (AMD). 1979, c. 127, §§22,23 (AMD). 1979, c. 541, §A21 (AMD). 1983, c. 508, §1 (AMD). 1983, c. 556, §1 (AMD). 1987, c. 737, §§C5,C6,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 857, §§16,17 (AMD). 1999, c. 208, §1 (AMD). 2003, c. 450, §1 (AMD). 2013, c. 16, §§3, 4 (AMD).

**§243-A. RANDOM AUDITS AND REVIEWS***(REPEALED)*

## SECTION HISTORY

2001, c. 104, §1 (NEW). 2003, c. 450, §2 (AMD). MRSA T. 5, §243-A (RP).

**§243-B. REPORT REGARDING DISCREPANCIES**

If in the course of any audit of a state department or agency the Office of the State Auditor finds significant discrepancies in the financial records of that state department or agency, the State Auditor shall report, in person, to the joint standing committee of the Legislature that has jurisdiction over that state department or agency within 60 days of the audit findings and the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and state and local government matters. If the Legislature is not in session during that 60 days, the State Auditor may report in writing to those committees. [2013, c. 16, §5 (AMD).]

## SECTION HISTORY

2003, c. 450, §3 (NEW). RR 2011, c. 1, §3 (COR). 2013, c. 16, §5 (AMD).

**§244. RECORDS AND REPORTS; FINDINGS OF IMPROPER PRACTICES**

The State Auditor may not perform the accounting functions for the State, but shall audit the accounts, books, records and other evidences of financial transactions kept in the Department of Financial and Administrative Services or in the other departments and agencies of State Government. The State Auditor shall prepare and publish a report for each fiscal year, setting forth the essential facts of such audits in summary form, within the following fiscal year after the books of the State Controller have been officially closed. If the State Auditor finds in the course of an audit evidences of improper transactions, or of unacceptable practices in keeping accounts or handling funds or of any other improper practice of financial administration, the State Auditor shall report the same to the Governor and the Legislature immediately. After reporting evidence of material weaknesses or reportable conditions, the State Auditor shall provide for subsequent review to ensure that those conditions are addressed in a timely manner and report to the Governor and the Legislature to confirm the status of the correction of those conditions. If the State Auditor finds evidences of illegal transactions, the State Auditor shall immediately report those transactions both to the Governor and to the Attorney General. All such evidences must be included in the annual reports of the State Auditor and the State Auditor may, at the State Auditor's discretion, make them public at any time during the fiscal year. [2003, c. 450, §4 (AMD).]

By September 15th of each year, the State Auditor shall schedule a meeting with each joint standing committee of the Legislature having jurisdiction over those departments or agencies in the audit of which the State Auditor has identified findings and the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and state and local government matters. The State Auditor shall present an assessment of findings and recommendations of the most recently completed audit performed pursuant to this section, including, but not restricted to, questioned costs and material weaknesses of state programs. The State Auditor shall notify affected state agencies and applicable state central service agency officials, such as, without limitation, the State Controller, State Budget Officer, State Purchasing Agent and Chief Information Officer, of the meeting time and place. [2003, c. 450, §4 (NEW).]

## SECTION HISTORY

1971, c. 145, §3 (AMD). 1979, c. 541, §A22 (AMD). 1985, c. 785, §A20 (AMD). 1995, c. 651, §1 (AMD). 1995, c. 651, §5 (AFF). 1999, c. 208, §2 (AMD). 2003, c. 450, §4 (AMD).

## §244-A. REPORTS TO THE STATE AUDITOR

The head of any department, agency, bureau or division of the State or of any board, commission, agency or authority of any county, municipality, school district or other political or administrative subdivision who has any evidence of any improper or illegal transactions within that department, agency, bureau or division shall immediately report the transactions to the State Auditor. [2003, c. 82, §1 (AMD).]

### SECTION HISTORY

1979, c. 46, (NEW). 2003, c. 82, §1 (AMD).

## §244-B. COMMITTEE TO DIRECT UNDERTAKING OF AUDITS

Pursuant to section 243, subsection 6, the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs may direct the State Auditor to undertake management audits, systems reviews or audits of any department or agency of the State. [1995, c. 651, §2 (NEW); 1995, c. 651, §5 (AFF).]

### SECTION HISTORY

1995, c. 651, §2 (NEW). 1995, c. 651, §5 (AFF).

## §244-C. ACCESS TO CONFIDENTIAL RECORDS

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Audit working paper" means all documentary and other information acquired, prepared or maintained by the State Auditor during the conduct of an audit or investigation, including all intraagency and interagency communications relating to an audit or investigation and includes draft reports or any portion of a draft report. [1997, c. 703, §1 (NEW).]

B. "Auditor" means the State Auditor or an agent of the State Auditor who is an employee of the Office of the State Auditor. [2013, c. 16, §6 (AMD).]

[ 2013, c. 16, §6 (AMD) .]

**2. Information available to the Auditor.** Notwithstanding any state law relating to the confidentiality of information, all information in the files of any department, commission or agency of the State subject to an audit or investigation by the Auditor must be made available when necessary to the Auditor for performance of the Auditor's official duties.

A. Before beginning an audit or investigation that may require access to records containing confidential or privileged information, the Auditor shall consult with representatives of the department, commission or agency to discuss methods of identifying and protecting privileged or confidential information in those records. During that consultation, the department, commission or agency shall inform the Auditor of all standards and procedures set forth in department, commission or agency policies or agreements to protect information considered by the department, commission or agency to be confidential or privileged. The Auditor shall limit access to information that is privileged or confidential by appropriate methods, which may include examining records without copying or removing them from the department, commission or agency. [1997, c. 703, §1 (NEW).]

B. In making information available to the Auditor, the department, commission or agency that is subject to the audit or investigation or that provides the information may remove information that identifies individuals or institutions to protect privileged or confidential information, provided the information necessary for the Auditor to fulfill the Auditor's official duties is disclosed to the Auditor. If names are removed, another unique identifier must be inserted to enable verification of audit results. [1997, c. 703, §1 (NEW).]

C. Documentary or other information obtained by the Auditor during the course of an audit or investigation is privileged or confidential to the same extent under law that that information would be privileged or confidential in the possession of the department, commission or agency providing the information. Any privilege or statutory provision, including penalties, concerning the confidentiality or obligation not to disclose information in the possession of any department, commission or agency or their officers or employees applies equally to the Auditor. Privileged or confidential information obtained by the Auditor during the course of an audit or investigation may be disclosed only as provided by law and with the agreement of the department, commission or agency subject to the audit or investigation that provided the information. [1997, c. 703, §1 (NEW).]

D. If the Auditor accesses information classified as privileged or confidential pursuant to department, commission or agency policy or procedures or by agreement, the Auditor shall comply with the department, commission or agency standards or procedures for handling that information. The Auditor may include in the audit working papers only such excerpts from information classified as confidential or privileged as may be necessary to complete the audit, provided the use does not infringe on department policies or procedures applicable to the original provision of information. [1997, c. 703, §1 (NEW).]

[ 1997, c. 703, §1 (NEW) .]

**3. Confidentiality of audit working papers.** Except as provided in this subsection, audit working papers are confidential and may not be disclosed to any person. Prior to the release of the final audit or investigation report, the Auditor has sole discretion to disclose audit working papers to the department, commission or agency subject to the audit or investigation when such disclosure will not prejudice the audit or investigation. After release of the final audit or investigation report, working papers may be released as necessary to:

A. The department, commission or agency that was subject to the audit or investigation; [1997, c. 703, §1 (NEW).]

B. Federal agencies providing a grant to the audited entity; [1997, c. 703, §1 (NEW).]

C. Law enforcement agencies for the purpose of criminal law enforcement or investigations; or [1997, c. 703, §1 (NEW).]

D. Other auditors in their work reviewing the Office of the State Auditor. [2013, c. 16, §7 (AMD).]

[ 2013, c. 16, §7 (AMD) .]

#### SECTION HISTORY

1997, c. 703, §1 (NEW). 2013, c. 16, §§6, 7 (AMD).

## **§244-D. REFERRAL SERVICE; CONFIDENTIALITY; PUBLIC RECORDS** **(REPEALED)**

#### SECTION HISTORY

2005, c. 682, §2 (NEW). MRSA T. 5, §244-D, sub-§5 (RP).



## §244-E. REFERRAL SERVICE; CONFIDENTIALITY; PUBLIC RECORDS

**1. Identity confidential.** The identity of a person making a complaint alleging fraud, waste, inefficiency or abuse through a hotline or other referral service established by the State Auditor for the confidential reporting of fraud, waste, inefficiency and abuse in State Government is confidential and may not be disclosed, unless the person making the complaint agrees in writing to the disclosure of that person's name.

[ 2009, c. 567, §1 (NEW) . ]

**2. Contents of complaint confidential.** A complaint alleging fraud, waste, inefficiency or abuse made through a hotline or other referral service established by the State Auditor for the confidential reporting of fraud, waste, inefficiency and abuse in State Government and any resulting investigation is confidential and may not be disclosed except as provided in subsections 3 and 4.

[ 2009, c. 567, §1 (NEW) . ]

**3. Coordination with Office of Program Evaluation and Government Accountability and Attorney General.** The State Auditor may disclose information that is confidential under this section to the Director of the Office of Program Evaluation and Government Accountability and the Attorney General to ensure appropriate agency referral or coordination between agencies to respond appropriately to all complaints made under this section.

[ 2009, c. 567, §1 (NEW) . ]

**4. Reports.** For each complaint under this section, the State Auditor shall submit a written report to the Governor and publish the report on the auditor's publicly accessible website. The report must include a detailed description of the nature of the complaint, the office, bureau or division within the department or any agency that is the subject of the complaint, the determination of potential cost savings, if any, any recommended action and a statement indicating the degree to which the complaint has been substantiated. The report must be submitted no later than 120 days after the State Auditor receives the complaint. In addition, the State Auditor shall publish a semiannual report to the Governor and Legislature of the complaints received by the hotline or other referral service, which may be electronically published. The report must include the following information:

A. The total number of complaints received; [2009, c. 567, §1 (NEW) . ]

B. The number of referrals of fraud or other criminal conduct to the Attorney General; [2009, c. 567, §1 (NEW) . ]

C. The number of referrals of agency performance issues to the Office of Program Evaluation and Government Accountability; and [2009, c. 567, §1 (NEW) . ]

D. The number of investigations by the State Auditor by current status whether opened, pending, completed or closed. [2009, c. 567, §1 (NEW) . ]

[ 2009, c. 567, §1 (NEW) . ]

### SECTION HISTORY

2009, c. 567, §1 (NEW) .

## §245. NO EX OFFICIO DUTIES

The State Auditor shall not serve in an ex officio capacity on any administrative board or commission or have any financial interest in the transactions of any department, institution or agency of the State Government. He shall not be responsible for the collection of any money belonging to the State or for the handling or custody of any state funds.

## §246. ADMINISTRATION OF THE UNORGANIZED TERRITORY EDUCATION AND SERVICES FUND

**1. Position created.** There is created within the Office of the State Auditor the position of fiscal administrator of the unorganized territory. The fiscal administrator must be a person qualified by education or experience in the administration of budgets. The position is subject to the Civil Service Law.

[ 2013, c. 16, §8 (AMD) .]

**2. Duties.** The fiscal administrator of the unorganized territory shall have the following duties:

A. To review, analyze and investigate the budgets and expenditures of all counties and state agencies requesting funds under Title 36, chapter 115; [1985, c. 459, Pt. C, §1 (NEW).]

B. To prepare and submit, by March 1st, annually, a report of the fiscal administrator's review, analysis and investigation to the joint standing committee of the Legislature having jurisdiction over taxation, each Legislator representing a county containing unorganized territory and the office of the county commissioners of each county having unorganized territory. The report must contain sufficient detail to explain fully each agency or county request and may contain recommendations by the administrator regarding legislative or administrative action. This report must also include information relating to development districts under consideration or approved by the county commissioners under Title 30-A, section 5235 and provide details regarding costs and tax shifts resulting from or anticipated to result from the development district or proposed district; [2007, c. 636, §1 (AMD).]

C. To publish an annual financial report, signed by the administrator, as required by Title 36, section 1608, and to make that report available to taxpayers in the unorganized territory upon request; [1985, c. 459, Pt. C, §1 (NEW).]

D. To attend public hearings, if necessary, on county budgets relating to the unorganized territory and to attend legislative hearings on bills relating to property taxes and the funding of services in the unorganized territory; [1985, c. 459, Pt. C, §1 (NEW).]

E. To design budget request forms to be used by counties and by agencies requesting funds under Title 36, chapter 115; [1985, c. 459, Pt. C, §1 (NEW).]

F. To design contract forms to be used by counties and state agencies for all contracted services; and [1985, c. 459, Pt. C, §1 (NEW).]

G. To design forms for agencies reporting actual annual expenses for reimbursement from the Unorganized Territory Education and Services Fund. [1985, c. 459, Pt. C, §1 (NEW).]

[ 2007, c. 636, §1 (AMD) .]

**3. Legislation.** The fiscal administrator shall prepare and submit legislation to the Legislature by March 1st, annually, providing for the requests made by counties and state agencies for services provided in the unorganized territory that are entitled to funding under Title 36, chapter 115. The administrator may not reject or change a budget submitted by a county or state agency without the approval of the county or agency making the request.

[ 2009, c. 303, §1 (AMD) .]

**4. Investigation.** In order to perform the duties described in this section, the fiscal administrator may inspect the records of any agency or county requesting funding from the Unorganized Territory Education and Services Fund.

[ 1985, c. 459, Pt. C, §1 (NEW) .]

**5. Funding.** The costs of the positions and responsibilities required in this section shall be reimbursed from the Unorganized Territory Educational and Services Fund established under Title 36, chapter 115.

[ 1985, c. 459, Pt. C, §1 (NEW) .]

SECTION HISTORY

1985, c. 459, §C1 (NEW). 1985, c. 785, §B13 (AMD). 2007, c. 636, §§1, 2 (AMD). 2009, c. 303, §1 (AMD). 2013, c. 16, §8 (AMD).

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