



SPONSOR: Rep. Lavelle & Sen. Sokola;
Reps. Hudson, Smith, Valihura, Sens. Copeland, Sorenson

HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE BILL NO.

AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO THE COUNTY AUDITOR.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 WHEREAS, the General Assembly finds and declares that audits of local government programs, functions, activities, and
2 organizations are an integral part of the administrative process of local government and are essential in providing accountability for
3 its performance; and

4 WHEREAS, the functions of an auditor are particularly important in the public sector, as the checks on poor performance
5 traditionally found in the private sector are not a major threat to public sector organizations; and

6 WHEREAS, government officials throughout the country have realized that an independent oversight function is particularly
7 important because of the unique relationship that government auditors have with their primary stakeholders, i.e. the taxpayers; and

8 WHEREAS, the taxpayers of the State of Delaware deserve to know that their scarce tax dollars are being protected by audit
9 functions which operate with reasonable independence from the supervisory chain and that those audit functions ensure compliance
10 with a generally accepted norm for governmental accounting practices; and

11 WHEREAS, while the Delaware Code currently does provide for a County Auditor for New Castle County who must be
12 properly qualified and carry out audits of local accounts, books, and records, it is unclear as to the level of independence of its
13 functions or whether its audits ensure compliance with a generally accepted norm for governmental accounting practices;

14 NOW, THEREFORE:

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

16 Section 1. Amend Title 9 of the Delaware Code by transferring § 1401 through § 1409 thereof from their current position in
17 Chapter 13 thereof to a new Chapter 14 within Title 9 entitled: "CHAPTER 14. THE COUNTY AUDITOR."

18 Section 2. Amend § 1401, Title 9 of the Delaware Code, by striking subsection (a) thereof and by substituting in lieu thereof
19 the following:

20 “(a) There is established, within the Government of New Castle County, the Office of the County Auditor the administrator
21 and head of which shall be known as the County Auditor. The County Auditor shall be appointed by the County
22 Council and may be removed prior to the expiration of his or her term of appointment only for good cause shown and
23 by an affirmative vote of 2/3 of the members thereof. The County Auditor shall serve a term of 4 years, beginning on
24 the date of his or her appointment by the County Council. The incumbent County Auditor shall hold over in office
25 after the expiration of his or her term of office, and shall continue to exercise the duties of County Auditor, until his or
26 her successor is appointed by the County Council.”

27 Section 3. Amend § 1401(b), Title 9 of the Delaware Code, by adding thereto a new sentence as follows:

28 “The functions and duties of the County Auditor shall be conducted in accordance with the most recent General
29 Auditing Standards promulgated by the United States General Accounting Office.”

30 Section 4. Amend § 1401, Title 9 of the Delaware Code, by adding thereto the following new subsection:

31 “(d) The County Auditor shall not be actively involved in partisan political activities or the political affairs of New Castle
32 County.”

33 Section 5. Amend Title 9 of the Delaware Code, by striking § 1402 thereof in its entirety and by substituting in lieu thereof the
34 following:

35 “§ 1402. Budget; Assistant County Auditors; Contract Auditors.

36 (a) The County Auditor shall be provided with a separate budget sufficient to carry out the responsibilities and functions
37 of this Chapter and any other responsibilities or functions which are by law assigned to, or required of, the County
38 Auditor.

39 (b) The County Auditor may appoint, employ, and remove such employees, personnel, and Assistant County Auditors as
40 deemed necessary for the efficient and effective administration of this chapter, subject to available resources.

41 (c) Notwithstanding any other provision of law governing the procurement of services by County Government or the
42 officers thereof to the contrary, the County Auditor may, subject to available resources, freely obtain the services of
43 Certified Public Accountants, qualified management consultants, or other professional experts necessary to perform
44 his or her duties; provided, however, that no conflicts of interest exist between or among those with whom the County
45 Auditor contracts and any area of county government that might hinder the performance of the services sought.

46 (d) Any Assistant County Auditor who shall perform any auditing duties shall be a qualified accountant, a graduate of a
47 college or university with a degree in accounting, or shall have otherwise received such training and experience as to
48 provide an equivalent level of expertise.”

49 Section 6. Amend Title 9 of the Delaware Code by striking § 1403 thereof in its entirety and by substituting in lieu thereof the
50 following:

51 “§ 1403. Certification of Annual Financial Report of Chief Financial Officer.

52 (a) The County Auditor shall have a qualified accounting firm conduct an audit of the annual financial report of the
53 Chief Financial Officer and append thereto a certificate which shall state whether, in the opinion of the accounting
54 firm, the financial statements in the financial report:

55 (1) contain a proper record of the County’s financial transactions for the year;

56 (2) properly reflect the current assets, liabilities, and funded debt of the County as of the close of the fiscal year;
57 and

58 (3) comply with Generally Accepted Principles of Governmental Accounting.

59 (b) Should there be any qualifications or exceptions to any portion of the annual financial report of the Chief
60 Financial Officer, they shall be stated by the accounting firm in an explicit manner in the certification appended to
61 the audit conducted pursuant to subsection (a) of this section.”

62 Section 7. Amend Title 9 of the Delaware Code by striking § 1404 thereof in its entirety and by substituting in lieu thereof the
63 following:

64 “§ 1404. Annual Audits and the Audit Committee.

65 (a) The County Auditor shall oversee, coordinate, and monitor an annual audit of the accounts, books, and records of
66 all offices, departments, and boards that reflect transactions involving financial activities and affairs of the
67 County.

68 (b) At the beginning of each calendar year, the County Council shall establish, and appoint all members to, an Audit
69 Committee which shall:

70 (1) Consist of one member of the County Council and 6 other individuals, who are not employees of or under
71 contract with New Castle County, and who have no conflicts of interest with the administration or
72 management of county government, at least 2 of whom are Certified Public Accountants each with not less
73 than 3 years of experience in auditing governmental accounts or functions;

74 (2) Meet at least on a quarterly basis to consult with the County Auditor regarding:

75 a. the establishment of an audit schedule for the coming year,

76 b. the progress of ongoing audits,

77 c. any necessary follow-ups to audits completed during the previous 12 months,

- 78 d. and any special needs expressed by the auditor or the Chief Financial Officer;
- 79 (3) Work throughout the year to assure the maximum coordination between and among the work of the County
- 80 Auditor and the needs of the Chief Financial Officer, the County Council, and any external auditors who may
- 81 have been employed under the authority of the County Auditor;
- 82 (4) Recommend to the County Council a salary schedule for the County Auditor.
- 83 (c) At the beginning of each calendar year, the County Auditor shall submit to the Audit Committee a one to five
- 84 year audit schedule for review and comment. The schedule shall include a proposed plan for auditing
- 85 departments, offices, boards, activities, subcontractors, agencies, and instrumentalities of the county for the
- 86 period. The schedule may be amended during the period after consultation with the Audit Committee.
- 87 (d) Annual audits may either be complete, or in such lesser degree as the County Auditor shall find acceptable to
- 88 enable him or her to express opinions concerning whether such transactions are in compliance with Generally
- 89 Accepted Principals of Governmental Accounting as well as the appropriate ordinances, rules and regulations of
- 90 the County Council, and laws governing such transactions.
- 91 (e) Annual audits shall be completed, and a report thereupon produced, not later than the end of the sixth month
- 92 following the completion of the fiscal year in which such transactions shall have occurred. Prior to the issuance
- 93 of the audit report pursuant to this subsection, a final draft thereof shall be submitted to the audit committee for
- 94 review and comment regarding factual content before it is released. The County Auditor shall make the final
- 95 decision regarding all matters, facts, and opinions contained in the report.”

96 Section 8. Amend § 1407, Title 9 of the Delaware Code, by re-designating the existing language thereof as subsection (a) and

97 by adding thereto a new subsection as follows:

98 “(b) In addition to any special examination or audit conducted pursuant to subsection (a) of this section, the County

99 Auditor may make, or may cause to be made by a qualified accounting firm, a special examination of any

100 financial transaction or matter if he or she has reasonable grounds to believe that any unauthorized, illegal,

101 irregular, or unsound practice is being employed in association with the transaction or matter. If the County

102 Auditor makes or causes a to be made a special examination pursuant to this subsection, the County Auditor shall

103 promptly report thereupon to the County Executive and the County Council.”

104 Section 9. Amend Title 9 of the Delaware Code, by striking § 1408 thereof in its entirety and by substituting in lieu thereof the

105 following:

106 “§ 1408. Access to records, facilities, property, equipment, etc.

- 107 (a) All officers and employees of New Castle County, and all departments, offices, boards, activities, subcontractors,
108 agencies, and instrumentalities thereof which are the subject of an audit by the County Auditor, shall furnish the
109 County Auditor with unrestricted access to employees, information, and records (including automated data)
110 within their custody regarding powers, duties, activities, organization, property, financial transactions, contracts,
111 and methods of business required by the Auditor to conduct an audit or otherwise perform his or her audit duties.
112 In addition, the County Auditor shall be given complete access to all property, equipment, facilities, data, and
113 documents within the custody or control of the person or entity subject to the audit. The County Auditor may
114 photograph, photocopy, or otherwise record anything he or she feels is necessary to accomplish the purposes of
115 the audit.
- 116 (b) If the County Auditor is at any time denied or restricted in his or her access to information described in subsection
117 (a) of this section, the County Auditor may initiate a search to be made and exhibits to be taken from any book,
118 paper, or record of or relating to any officer, employee, department, office, board, activity, subcontractor, agency,
119 or instrumentality which is the subject of an audit by the County Auditor, except as otherwise provided by statute.
- 120 (c) The County Auditor shall not publicly disclose any information received during an audit that is considered
121 confidential or proprietary in nature, or has been specifically identified as such by a federal, state, or local law or
122 regulation. Information received by the County Auditor during an audit, to the extent it is not included or
123 referenced in the report prepared by the County Auditor pursuant to § 1405 of this title, shall be exempt from
124 public disclosure under the Freedom of Information Act (29 Del. C. Chap. 100), unless such information was
125 subject to public disclosure in its original form.
- 126 (d) For the purposes of this section only, ‘County Auditor’ includes any Assistant County Auditor, employee of the
127 County Auditor, or agent of the County Auditor who is undertaking an audit at the direction or under the authority
128 of the County Auditor.”

129 Section 10. Amend Title 9 of the Delaware Code, by inserting therein a new section as follows:

130 “§ 1410. Quality Assurance Reviews.

- 131 (a) The Audit Committee shall conduct quality assurance review of the activities and functions of the Office of the
132 County Auditor. Such review shall take place not less than 3 nor more than 5 years from the date of the last such
133 quality assurance review.
- 134 (b) The Audit Committee shall utilize guidelines endorsed by the National Association of Local Government
135 Auditors in conducting the quality assurance review. In addition to those guidelines, the Audit Committee shall

136 determine whether the activities and functions of the Office of the County Auditor are undertaken in compliance
137 with the most recent General Auditing Standards promulgated by the United States General Accounting Office
138 and shall examine functional standards employed by the Office, including:

- 139 (1) general standards such as staff qualifications, due professional care, and overall quality assurance;
- 140 (2) fieldwork standards such as planning, supervision, and audit evidence; and
- 141 (3) reporting standards such as report content, presentation, and timeliness.

142 (c) The Audit Committee shall complete its review within a time frame established by the County Council and shall
143 prepare a report of its findings and recommendations no later than the end of the sixth month following the
144 completion of the quality assurance review.

145 (d) A copy of the Audit Committee's Quality Review Report shall be furnished to each member of County Council
146 and to the County Executive and shall be made available to the public.

147 (e) The County Council shall reimburse the Committee for reasonable costs incurred in the conduct of the Quality
148 Review and the preparation of the Quality Review Report."

149 Section 11. The provisions of this Act shall become effective on January 1, 2006. The term of office of the individual
150 currently holding the position of New Castle County Auditor shall expire on July 1, 2006. The New Castle County Council shall
151 appoint a County Auditor pursuant to the provisions of this Act no later than August 1, 2006. The New Castle County Council shall
152 appoint subsequent County Auditors every 4 years thereafter. New Castle County Council may in its discretion re-appoint an
153 incumbent County Auditor.

154 Section 12. If any provision of this Act or the application thereof to any person, thing or circumstances, is held invalid, such
155 invalidity shall not affect the provisions of this Act that can be given effect without the invalid provisions or application, and to this
156 end the provisions of this Act are declared to be severable.

SYNOPSIS

This Act modifies the existing functions and duties of the New Castle County Auditor to bring them in line with the recommendations of the National Association of Local Government Auditors. Some of the additional provisions include:

- ◆ a provision providing that the County Auditor can only be removed for good cause shown and by an affirmative vote of 2/3 of the members of New Castle County Council;
- ◆ a provision requiring the establishment of an independent Audit Committee by Council to advise the County Auditor;
- ◆ a provision permitting the County Auditor to undertake on his or her own volition an audit of transactions and matters if there is reasonable grounds to believe that any unauthorized, illegal, irregular, or unsound practices are being employed in association with the transactions or matters; and

- ◆ a provision requiring regular quality assurance reviews (i.e. conducted once every 3 to 5 years at the discretion of Council) of the County Auditor's activities by the Audit Committee.

This Act also requires that audits of the County ensure compliance with Generally Accepted Principles of Governmental Accounting and that the audits themselves are conducted in compliance with the most recent General Auditing Standards promulgated by the United States General Accounting Office.

Finally, this Act provides that information received during an audit that is considered confidential or proprietary in nature, or has been specifically identified as such by a federal, state, or local law or regulation, shall not be disclosed to the public to the extent it is not included or referenced in the County Auditor's audit report and that it shall be exempt from public disclosure under the Freedom of Information Act (29 Del. C. Chap. 100) unless it was subject to public disclosure in its original form.