

## LEGISLATIVE BILL 369

Approved by the Governor March 31, 2021

Introduced by Sanders, 45; Stinner, 48.

A BILL FOR AN ACT relating to the Auditor of Public Accounts; to amend section 84-305.01, Revised Statutes Cumulative Supplement, 2020; to provide for access to working papers and audit files as prescribed; to provide for a late fee and other enforcement powers; to provide a penalty; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 84-305.01, Revised Statutes Cumulative Supplement, 2020, is amended to read:

84-305.01 (1) The Auditor of Public Accounts shall have unrestricted access to the working papers and audit files for any audit report required to be filed with the office of the Auditor of Public Accounts.

(2) Upon receipt of a written request by the Auditor of Public Accounts for access to working papers and audit files, the auditor or auditing firm responsible for preparing such audit report shall provide to the Auditor of Public Accounts as soon as is practicable and without delay, but not more than three business days after receipt of such request, either (a) access to all of the requested materials or (b) a written explanation, including the earliest practicable date for fulfilling the request and an opportunity for the Auditor of Public Accounts to modify or prioritize the items within the request, if the entire request cannot with reasonable, good faith efforts be fulfilled within three business days after actual receipt of the request due to the significant difficulty or extensiveness of fulfilling the request. No delay due to the significant difficulty or extensiveness of any request for access to working papers and audit files shall exceed three calendar weeks after receipt of the written request from the Auditor of Public Accounts. The three business days shall be computed by excluding the day the request is received, after which the designated period of time begins to run. Business day does not include a Saturday, a Sunday, or any of the days enumerated in section 25-2221 or declared by law or proclamation of the President of the United States or Governor to be holidays.

(3) If the auditor or auditing firm responsible for preparing such audit report fails to comply timely and fully with a request for access to working papers and audit files, the Auditor of Public Accounts may:

(a) Assess the auditor or auditing firm a late fee of twenty dollars per day for each calendar day the requested working papers and audit files remain inaccessible. Such late fee shall begin on the same day that the Auditor of Public Accounts notifies the auditor or auditing firm by facsimile transmission, email, or first-class mail of the failure to provide access. The total late fee assessed under this subdivision shall not exceed two thousand dollars per incident. Of the late fee assessed and collected pursuant to this subdivision, the Auditor of Public Accounts shall remit to the State Treasurer for credit to the Auditor of Public Accounts Cash Fund an amount sufficient to reimburse the direct costs of administering and enforcing this section, but such amount shall not exceed one hundred dollars from any such late fee assessed and collected. The Auditor of Public Accounts shall remit the remainder of any late fee assessed and collected under this subdivision to the State Treasurer to be distributed in accordance with Article VII, section 5, of the Constitution of Nebraska; and

(b) Refuse to accept any audit report prepared by the auditor or auditing firm for a period of three calendar years from the date that the notification described in subdivision (3)(a) of this section is received by such auditor or auditing firm.

(4) Any deficiency noted by the Auditor of Public Accounts in reviewing the working papers and audit files may be forwarded to the Nebraska State Board of Public Accountancy for its consideration. The Auditor of Public Accounts may make any information or documents required to investigate such deficiency available to the board.

(5) For purposes of this section, working papers and audit files means those documents containing evidence to support the auditor's findings, opinions, conclusions, and judgments and includes the collection of evidence prepared or obtained by the auditor during the audit.

(6)(a) If any written request made under subsection (2) of this section is sent by either registered or certified United States mail, a record authenticated by the United States Postal Service of delivery of such registered or certified mail shall be considered competent evidence that the request was delivered to the person or entity to whom addressed.

(b) Any notification made under subdivision (3)(a) of this section which is transmitted through the United States mail shall be deemed made on the date it was mailed if the Auditor of Public Accounts provides competent evidence that such notification was deposited in the United States mail on such date.

Any person who willfully fails to comply with the provisions of section 84-305 or who otherwise willfully obstructs or hinders the conduct of an audit,

~~examination, or related activity by the Auditor of Public Accounts or who willfully misleads or attempts to mislead any person charged with the duty of conducting such audit, examination, or related activity shall be guilty of a Class II misdemeanor.~~

Sec. 2. Any person who willfully fails to comply with section 84-305 or 84-305.01, who otherwise willfully obstructs or hinders the conduct of an audit, examination, or related activity by the Auditor of Public Accounts, or who willfully misleads or attempts to mislead any person charged with the duty of conducting such audit, examination, or related activity shall be guilty of a Class II misdemeanor.

Sec. 3. Original section 84-305.01, Revised Statutes Cumulative Supplement, 2020, is repealed.