

Regular Session, 2013

HOUSE BILL NO. 482

BY REPRESENTATIVE STOKES

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

LEGISLATIVE AUDITOR: Provides relative to agency heads of auditees that receive three consecutive disclaimer of opinion audit reports

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AN ACT

To enact R.S. 24:518(D), relative to agency heads of certain auditees; to provide that a disclaimer of opinion audit reports shall serve as prima facie proof of malfeasance in office in certain cases; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 24:518(D) is hereby enacted to read as follows:

§518. Penalties

* * *

D. If the type of audit report received by a local auditee from a licensed certified public accountant for three consecutive years is a disclaimer of opinion as defined by Generally Accepted Auditing Standards, and the same person serves as the local official and as agency head for those three consecutive years, the disclaimers shall be prima facie proof of malfeasance in office if the auditor determines that the agency head willfully failed to provide or maintain the necessary records to conduct the audit.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Stokes

HB No. 482

Abstract: Provides that three consecutive years of a disclaimer of opinion shall be prima facie proof of malfeasance in office for an agency head if the auditor determines that the agency head willfully failed to provide or maintain the necessary records to conduct the audit.

Present law grants the legislative auditor authority to compile financial statements and to examine, audit, or review the books and accounts of auditees. For local auditees, provides that their financial statements shall be audited or reviewed by licensed certified public accountants but may be audited by the legislative auditor under certain conditions. Defines "auditees" as the state treasurer, all public boards, commissions, agencies, departments, political subdivisions of the state, public officials and employees, specified public retirement systems, municipalities, and all other public or quasi-public agencies or bodies. Defines "local auditees" as independently elected public local officials, including judges, sheriffs, clerks of court, assessors, and district attorneys, all parish governing authorities and all districts, boards, and commissions created by parish governing authorities either independently or in conjunction with other units of government, school boards, district public defender offices, municipalities, and all boards and commissions created by municipalities, either independently or in conjunction with other units of government, city courts, quasi-public agencies, housing authorities, mortgage authorities, or other political subdivisions of the state not included within the state's Comprehensive Annual Financial Reports.

Present law defines the crime of malfeasance in office and provides that whoever commits the crime of malfeasance in office shall be imprisoned for not more than five years with or without hard labor, fined not more than \$5,000, or both. Further provides that a person convicted of malfeasance in office may be ordered to pay restitution to the state if the state suffered a loss as a result of the offense, to include the payment of legal interest.

Proposed law provides that if the type of audit report received by a local auditee from a licensed certified public accountant for three consecutive years is a disclaimer of opinion as defined by Generally Accepted Auditing Standards, and the same person serves as the local official and as agency head for those three consecutive years, the disclaimers shall be prima facie proof of malfeasance in office if the auditor determines that the agency head willfully failed to provide or maintain the necessary records to conduct the audit.

(Adds R.S. 24:518(D))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill.

1. Changed proposed law provisions from establishing guilt of the commission of the crime of malfeasance in office to prima facie evidence of commission of the crime of malfeasance in office.
2. Deleted definition of "agency head".

3. Added requirement that the auditor determine that the agency head willfully failed to provide or maintain records to conduct the audit in order to establish prima facie evidence of commission of the crime of malfeasance in office.