PART 3
AUDITING ACT

CHAPTER 1.
General Provisions.

7811. Short Title.

This part may be cited as the Commonwealth Auditing Act of 1983.

Source: PL 3-91, 100.

Commission Comment: PL 3-91 took effect January 4, 1983. Pursuant to its authority to rearrange sections to fit harmoniously within the code, in the January 1997 revision, the commission moved the Commonwealth Auditing Act from title 1, division 7, part 2, where it had originally been codified. (See the comment to 1 CMC 7721.) The commission did not alter section numbers.

7812. Purposes.

It is the purpose of this part to implement N.M.I. Const. art. III, 12 by creating an office of the Public Auditor to conduct audits of all Commonwealth government agencies and activities and to assign such additional duties to the Public Auditor as the legislature deems necessary.


Commission Comment: For establishment of the office of the Public Auditor and his or her appointment, duties and powers, see 1 CMC 2301 et seq.

7813. Definitions.

As used in this part:
(a) Agency means any entity established or funded by law of the Commonwealth government or a local government. Agency includes the following entities and their officers, directors, employees, and independent contractors: any authority, board, branch, bureau, commission, cooperative, council, department, division, fund, group, institution, political division, office, or public corporation, including any autonomous or semiautonomous governmental entity.
(b) Audit means an independent examination of books, performance, documents, records, and other evidence relating to the receipt, possession, obligation, disbursement, expenditure, or use of public funds by any agency or any activity of any agency; or relating to any contract or grant to which any agency is a party, including any operations relating to the transactions. Audit includes financial audits, performance audits, and program audits or any combination of the audits that the Public Auditor may deem appropriate.
(c) Constitution means the Constitution of the Northern Mariana Islands.
(d) Coordinating group means the Interagency Audit Coordinating Advisory Group established by 1 CMC 2307.
(e) Financial audit means an audit to determine:
(1) Whether financial operations of any agency, or any relevant financial operations of any government contractor or grantee, have been properly conducted;
(2) Whether any financial report of any agency, contractor, or grantee has been fairly presented; and
(3) Whether any agency, contractor, or grantee has complied with laws and regulations applicable to its operations.
Performance audit means an audit to determine whether an agency has managed or used its funds, personnel, property, space, and other resources in an effective and efficient manner, and to identify the cause of any inefficiency or ineffective practice, including any inadequacy in management information systems, administrative procedures, or organizational structure;

Program audit means an audit to determine:

1. Whether the desired results or benefits of agency programs or activities or of any contract or grant, are being achieved;
2. Whether the objectives established by the legislature, or otherwise established pursuant to law or by the Constitution, are being met; and
3. Whether the agency, contractor, or grantee has considered alternatives which might yield desired results more effectively or at lower cost.

Source: PL 3-91, 102, modified.

CHAPTER 2.
Auditing Services, Standards and Procedures.

7821. Centralization of Auditing Services.

The office of the Public Auditor shall conduct or supervise all audits required for or sought by a Commonwealth agency.

Source: PL 3-91, 206.

7822. Audit Standards.

(a) The audit standards shall be consistent with the provisions of this part and with generally accepted auditing standards. The audit standards shall incorporate the Standards for Audit of Government Operations, Programs, Activities, and Functions published from time to time by the United States General Accounting Office, including those standards issued by the American Institute of Certified Public Accountants referred to therein.

(b) All audits conducted or caused to be conducted by the Public Auditor shall be performed with the highest degree of professionalism and with strict avoidance of any degree of partisanship or bias.

Source: PL 3-91, 207.

7823. Audit Procedures and Requirements.

(a) At the conclusion of the audit, the Public Auditor or a designee shall discuss the audit with the officials whose agency, grant, contract, or activity is subject to audit and submit to them a list of proposed findings which may be included in the audit report. The preliminary audit and proposed findings shall not be made public. If the officials are not available for personal receipt of the list of audit findings, then delivery shall be deemed made when it is delivered to the agency. The agency shall submit to the Public Auditor within 30 days after the receipt of the list of findings, its written statement of explanation or rebuttal concerning any of the adverse or critical audit findings, including any corrective action to be taken to preclude a recurrence of any adverse findings. The Public Auditor shall promptly notify the agency involved as well as the coordinating group in the event of an agency's failure to respond or the filing of unresponsive answers to the adverse or critical audit findings. The Public Auditor shall publish the substance of the agency's response in the audit report.

(b) An audit report shall make special mention of:

1. Any violation of the laws within the scope of the audit; and
(2) Any improper expenditure, any improper accounting procedures, all failures to properly record financial transactions, and all other inaccuracies, irregularities, shortages, and defalcations.

(c) Specific allegations naming the persons involved in improper or illegal acts found in connection with an audit shall be included in a separate confidential special report which shall be transmitted only to the Attorney General and federal agencies when applicable.

(d) The Public Auditor shall promptly make public in its entirety all final audit reports, recommendations, and other reports made. The audit report recommendations shall be implemented by the audited agency unless otherwise agreed on by the Public Auditor.

(e) The Public Auditor shall report semiannually to the legislature on the audited agencies compliance with the Public Auditors recommendations.

(f) It shall be unlawful for any person in possession of, with knowledge of, or privy to information contained in a preliminary audit and proposed findings report (draft audit report) to disseminate, release, disclose or otherwise reveal the substance of such report to anyone not included in the reports distribution list, unless necessary for agency comments. A violation of this subsection shall be punished by imprisonment for not more than six months, or a fine of not more than $1,000.00 or both.

Source: PL 3-91, 208; amended by PL 9-68, 2; subsection (f) added by PL 12-65, 6.


Purpose. It is the purpose of this Act to grant the Office of the Public Auditor greater independence and authority with respect to the executive branch and independent agencies of the Commonwealth Government. This Act also conforms the Commonwealth Auditing Act of 1983 [1 CMC 7811 et seq.], and other provisions of the Commonwealth law to the recently adopted Constitutional Amendment of [N.M.I. Const. art. III, 12].

On September 27, 2001, PL 12-65, which contained the Commonwealth Auditing Amendments Act of 2001, was enacted. With respect to PL 12-65, see the comment to 1 CMC 2305.

CHAPTER 3.
Budgeting and Funding for the Public Auditor.

7831. Authorization for Funding By Commonwealth Agencies.

(a) The Director of Finance shall withhold one percent of all locally generated funds appropriated by Commonwealth law for all Commonwealth government agencies operations and activities as well as for all capital improvement projects and, in no event, no less than $1,000,000 for the office of the Public Auditor. The term appropriated by law includes appropriations pursuant to the continuing spending authority provided for in N.M.I. Const. art. III, 9(a). The withheld amounts shall be deposited in a special account established by the Director of Finance, separate from the General Fund, to be administered in accordance with 1 CMC 7206 and, therefore, may be expended without further appropriation. The office of the Public Auditor shall report no later than three months after the closing of each fiscal year to the Governor and the legislature in detail on the use of the funds.

(b) The executive directors of all public corporations or other autonomous agencies of the Commonwealth which are not funded primarily by legislative appropriations shall pay to the Public Auditor an amount not less than the greater of one percent of its total operations budget from sources other than legislative appropriations or pursuant to any other formula upon which the Public Auditor and the agency may agree. The funds shall be administered pursuant to subsection (a) of this section.

(c) No funds paid into the account of the office of the Public Auditor shall be reprogrammed for any other purpose to any other agency.

(d) The legislature shall be exempt from the requirement of one percent contribution of legislative funds to the office of the Public Auditor.
7832. Authorization to Accept Funds for Audits for Federal Agencies.

(a) The Public Auditor may enter into agreements or contracts for the federal government, federal agencies, or Commonwealth agencies, acting in their behalf, for the purpose of conducting mutual financial audits of programs funded in whole or in part by the federal government and carried out by agencies of the Commonwealth government.

(b) Applications for grants, except where prohibited by law or the provisions of the grant, shall include a request for funds adequate to accomplish the objectives of grant proposal, including monies to pay for the audit or audits of the financial transactions as required by law or the provisions of the grant. Monies budgeted for auditing a grant shall not be used for any other purpose.

(c) Costs shall be charged at rates established by the Public Auditor and all amounts received on account of those charges shall be deposited with the Treasurer of the Commonwealth in a special account in the General Fund and may be expended without further appropriation solely by the Public Auditor for the operations and activities of the office of the Public Auditor.

(d) The term of employment of any individual or firm hired by the Public Auditor under the provisions of this section shall be expressly limited in duration by the availability of federal funds and shall expire on the date of expiration of the federal funds.

Source: PL 3-91, 301.

7833. Budget.

The Public Auditor shall advise the coordinating group of his annual budget at least 30 days before the date specified by the Governor for transmittal of the budget to the Office of Planning and Budget. The budget shall accord with the requirements of part 1 of this division, the Planning and Budget Act [1 CMC 7101 et seq.]. After consideration of any comments made by the coordinating group, the Public Auditor shall transmit the proposed budget in the form and manner specified by the Governor. The Governor shall include the budget, as transmitted in his annual budget required by this section. Unless additional appropriations are requested, the budget of the Public Auditor shall be included in the Governors budget submission for informational purposes.

Source: PL 3-91, 302.

Commission Comment: With respect to the reference to the Office of Planning and Budget, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC 2001.

CHAPTER 4.
Authority to Gather Information; Criminal Penalties.

7841. Protection of Whistle-blowers.

(a) The Public Auditor may receive and investigate complaints or information of any person concerning possible existence of any activity constituting fraud, waste and abuse in the collection and expenditure of public funds.
(b) The Public Auditor shall not, after receipt of a complaint or information from a person, disclose the identity of the person without the written consent of the person, unless the Public Auditor determines the disclosure is necessary and unavoidable during the course of the investigation. In that event, the person shall be notified in writing prior to the disclosure.

(c) Any person who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any person as reprisal for making any complaint or disclosing any information to the Public Auditor, unless the complaint made or the information disclosed was with actual knowledge that it was false or with willful disregard for its truth or falsity.

(d) If the person comes forward with information leading to the recovery of public funds, that person shall receive a $500.00 reward or five percent of the total recovery, whichever is greater.

Source: PL 3-91, 400; (d) added by PL 14-60, 3.

Commission Comment: PL 14-60 was enacted on February 9, 2005, and contained the following title and findings and purposes, in addition to severability and savings clause provisions:

Section 1. Title. This Act shall be known as the Whistle-blowers Compensation Act of 2004.

Section 2. Findings and Purposes. The Legislature finds that 1 CMC 7841 provides ample protection for people who provide information concerning the possible existence of any activity constituting fraud, waste and abuse in the collection and expenditure of public funds. However, the Legislature finds that this program would be even more effective if the people submitting this vital information were to receive monetary compensation, but only if said information gives the Office of the Public Auditor an opportunity to recover public funds.

7842. Access to Agency Information.

(a) Access Required. The Public Auditor, in carrying out the provisions of this part shall have access to all records, reports, audits, reviews, papers, books, documents, recommendations, correspondence, and any other data and material that is maintained by or available to any agency which in any way relates to the activities to which the Public Auditor has duties and responsibilities. The Public Auditor shall request such information, cooperation, and assistance from any agency as may be necessary for carrying out his duties and responsibilities. Upon receipt of a request, each person in charge shall furnish to the Public Auditor or a designee the information, cooperation, and assistance requested. The Public Auditor may make such investigations, audits, and reports relating to the activities of the agencies audited as is necessary and may conduct any examination of any public documents. The Public Auditor shall have direct and prompt access to the head of any agency when necessary for any purpose pertaining to the performance of his or her duties.

(b) Production of Testimony or Documents Required. The Public Auditor may request the production, on a voluntary basis, of testimony or documents from any individual, firm, or nongovernmental entity which relate to his or her duties.

(c) Authority to Summon for the Production of Records. The Public Auditor may require by summons, the production of all records, reports, audits, review, papers, books, documents, recommendations, correspondence, and any other data and material relevant to any matter under audit or investigation. The summons shall be served in the same manner as the summons for the production of documents in civil cases issued on behalf of the Commonwealth, and all provisions of law relative to the summons shall apply to a summons issued under this part. Any judge of the Commonwealth Trial Court may, upon application by the Public Auditor, issue an order to compel the productions of records, audits, reviews, papers, books, documents, recommendations, correspondence, and any other data and material relevant to any matter under audit or investigation. Any failure to obey a court order is punishable by the court as contempt.

(d) Procedures for a Summons of Records. No summons issued under this section may be made public by the Public Auditor or any employee of the office of the Public Auditor, nor may any documents provided under this section be made public until such time as it is necessary for the Public Auditor to do so in the performance of duties.
The provisions of subsections (c) and (d) of this section shall apply to 1 CMC 7843, 7844 and 7845.

Source: PL 3-91, 401.

Commission Comment: Section 4 of PL 6-25, the Commonwealth Judicial Reorganization Act of 1989, provides that [w]herever the term Commonwealth Trial Court appears in the Commonwealth Code, it is henceforth to be interpreted and understood to refer to the Commonwealth Superior Court.

7843. Access to Confidential Information and Proprietary Records.

(a) Confidential or proprietary records or information disclosed to the Public Auditor are subject to the same legal confidentiality and protective restrictions in the office of the Public Auditor as those records and information have in the hands of the official authorized custodian. Any penalties applicable to the officially authorized custodian or his or her employees for the violation of any confidentiality or protective restrictions applicable to those records or information shall also apply to the employees and agents of the office of the Public Auditor.

(b) The office of the Public Auditor may not publish any confidential or proprietary information or records in any report, including data and statistics, if that information as published is directly matchable to any individual.

(c) Inside the office of the Public Auditor, confidential or proprietary records or information may be used only for official purposes.

Source: PL 3-91, 402.

7844. Access to Tax Data.

(a) The Public Auditor or any staff member designated by the Public Auditor may examine and audit the books and accounts of the Department of Finance, including the Division of Revenue and Taxation, and shall have access to all papers, books, documents (including tax returns and tax return information), films, tapes, and any other forms of recordation, including computers and recording devices, which the Public Auditor, at his discretion, deems necessary for the purpose of making the audit, if the disclosure of information is not in contravention of any provision of federal law prohibiting its dissemination.

(b) The Public Auditor and his or her designees may audit and enforce a taxpayers or debtors compliance with Commonwealth law in the same manner and with the same authority as the director and employees of the Department of Finance have to audit and enforce a taxpayers or debtors compliance with Commonwealth law. The Public Auditor may conduct audit activities after written notice to the Director of Finance.

(c) The scope of the examination may include certification of financial accountability, legal compliance, or evaluations of the economy, efficiency, and effectiveness of the Department of Finance, or any combination of the foregoing.

(d) In the performance of the audit and examination of the Department of Finance, the Public Auditor or any staff member designated by the Public Auditor may inspect and make copies of any paper, books, records, instruments, documents (including tax returns and tax return information), films, tapes, and any other forms of recordation, including computers and recording devices of the department. The Public Auditor may call upon the department for assistance and advice, and the assistance and advice shall be given through the assignment of personnel or in any other manner as requested.

Source: PL 3-91, 403; amended by PL 9-68, 7.

Commission Comment: With respect to the references to the Department of Finance and the Director of Finance, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC 2001.

7845. Access to Contracts and Grants Information.
Any contract to which an agency is party, except a personal service or prime contract with an employee of the agency, and any grant awarded by any agency, with or without formal advertising, shall include a clause to the effect that the Public Auditor shall, until the expiration of three years after final payment, have access to and the right to examine and copy any records, data, or papers of any subcontractor or subgrantee, relevant to the contract or grant.

Source: PL 3-91, 404.

7846. Power to Summon Persons to Testify.

(a) Whenever the Public Auditor has a reasonable basis for believing that a person has information with respect to any matter which is within the Public Auditors jurisdiction to investigate, the Public Auditor may require by summons the attendance and testimony under oath of the person.

(b) If necessary to secure enforcement, the Public Auditor shall provide to the judge information concerning the matter under investigation which shall include: the name and address of the prospective witness; the subject of the investigation; a summary of the status of the investigation; a summary of the reasons for requesting a summons for testimony; and a summary of the general scope of the inquiry to be made of a prospective witness.

(c) The summons shall be served in the same manner as a summons for a witness in a civil case issued on behalf of the Commonwealth and all provisions of law relative to a summons issued in such a case shall apply to a summons issued under this section. A witness required by summons to attend and testify under oath and produce books and records shall be given not less than 48 hours notice of the time and place of the taking of testimony, unless the notice shall unduly interfere with the conduct of the investigation and prior approval for a shorter period of time for the summons and notice has been obtained from the judge. The witness, at the time of service of the summons, shall be notified of the matter under investigation concerning which the witness will be required to testify and shall be given a copy of the rules and procedures adopted by the Public Auditor and shall be notified that the testimony of the witness will be taken at a private session and that the issuance of the summons was approved by the judge and whether the witness is a subject of an investigation. The failure to furnish the witness with any notice or information required to be given by this section shall cause the summons to be invalid. In addition the witness shall be notified that the witness has a right to consult with and to have an attorney present at the time the testimony is taken and that the witness has a constitutional right not to furnish or produce evidence which may tend to be self-incriminatory.

(d) A person summoned to attend and testify shall appear and testify under oath before the Public Auditor or a designee.

(e) The information sought from the summoned witness must be reasonably related to the subject matter under investigation. No summons may be issued for purposes of harassment or any illegitimate or improper purpose. All constitutional and statutory rights and privileges which exist with respect to any summons issued by a court, including the privilege against self-incrimination, shall have the same force and effect with respect to any summons issued by the Public Auditor.

(f) Any judge of the Commonwealth Trial Court may, upon application by the Public Auditor, issue an order to compel the attendance summoned and the giving of testimony under oath in furtherance of any audit or investigations under this part in the same manner and to the same extent as before the Commonwealth Trial Court. Failure to obey the order of the court with respect to the summons may be punished by the court as contempt.

Source: PL 3-91, 405.
Commission Comment: Section 4 of PL 6-25, the Commonwealth Judicial Reorganization Act of 1989, provides that wherever the term Commonwealth Trial Court appears in the Commonwealth Code, it is henceforth to be interpreted and understood to refer to the Commonwealth Superior Court.

7847. Referrals: Criminal Action.

(a) In carrying out his or her duties, the Public Auditor shall report to the Attorney General whenever the Public Auditor has reasonable grounds to believe there has been violations of either federal or Commonwealth criminal law. The Attorney General may institute further proceedings.

(b) If the Public Auditor has reasonable grounds to believe the Governor or Attorney General has violated federal or Commonwealth criminal law, the Public Auditor may use the legal counsel for the office of the Public Auditor or retain special counsel who shall serve as an assistant attorney general for purposes of investigating and prosecuting, if necessary, the criminal law violations.

Source: PL 3-91, 406.

7848. Referrals: Civil Action.

The Public Auditor may institute the civil recovery action if authorized by the Attorney General. If the Public Auditor has discovered fraudulent acts and believes that civil recovery proceedings may be appropriate, the Public Auditor shall refer the matter to the Attorney General. The Attorney General may institute whatever proceedings the Attorney General deems appropriate, may refer the matter to another Commonwealth agency, may authorize the institution of appropriate civil proceedings by the Public Auditor, may retain the matter for further investigation, or may remand the matter to the Public Auditor for further investigation.

Source: PL 3-91, 407.

7849. Secrecy of Records; Penalty for Violation.

All records of the Public Auditor shall be confidential unless it is deemed necessary for the Public Auditor to make the records public in the performance of his or her duties. Violations relative to the secrecy of proceedings by the Public Auditor or any member of the Public Auditors staff shall be punished by imprisonment for not more than six months or by a fine for not more than $1,000.

Source: PL 3-91, 408.

7850. Penalties; Failure to Make Proper Audit; Making False Audit; Failure to Produce Documents or Information.

(a) All agencies shall enter into their public record sufficient information for a proper audit, and shall make the same available to the Public Auditor upon request.

(b) Any person who willfully fails or refuses to furnish or produce any book, record, paper, document, data, or sufficient information necessary to a proper audit which the Public Auditor is authorized by law to perform may be found guilty of an offense and may be punished by imprisonment for not more than three months, or a fine of $1,000, or both.

(c) A willful failure or refusal by any person to furnish or provide upon request any book, record, paper, document, data, or sufficient information necessary to a proper audit which the Public Auditor is authorized by law to perform is cause for removal of the official or employee from office as provided by law.

Source: PL 3-91, 409.

7851. Exclusion from Government Service.
Any person who is convicted under a prosecution pursuant to 1 CMC 7847 shall be prohibited from working for the government of the Commonwealth for a period of 10 years from the date of conviction of a crime.

Source: PL 9-68, 5, modified.

Commission Comment: See the comment to 1 CMC 7823. The commission revised the section number specified for this section in PL 9-68.