

**§ 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.

(e) The Public School System (PSS) shall be exempt from the withholding and payment requirements of subsections (a) and (b) of this section; provided that one percent of the budget appropriated to PSS shall be used exclusively for the purchase of textbooks and shall not be reprogrammed for any other purpose. The Commissioner of Education shall establish a Textbook Account into which funds realized by operation of this subsection shall be deposited. These funds shall not be commingled with other PSS accounts and shall be used solely for the purposes of this subsection. The Commissioner of Education shall be the expenditure authority for funds deposited into the Textbook Account.

(f) The Commonwealth Ports Authority (CPA) shall be exempt from the withholding and payment requirements of subsections (a) and (b) as to CPA's airport revenues only. This exemption does not apply to CPA's seaport revenues or any other non-airport related funding sources of CPA. Provided, that the Office of the Public Auditor (OPA) may charge the Commonwealth Ports Authority a reasonable rate for any services rendered to CPA, including services related in whole or in part to CPA's airport operations and funding, and CPA shall pay OPA for these

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services no later than the end of the fiscal year following the year in which such service was requested or performed.

**Source:** PL 9-68, § 3 (repealing PL 3-91, § 300, as amended by PL 5-44, § 7 and PL 9-66, § 515); (e) added by PL 15-107, § 2, modified; amended by PL 22-18, § 2 (June 24, 2022).

**Commission Comment:** See the comment to [1 CMC § 7823](#). With respect to the references to the “Director of Finance,” see Executive Order 94-3 (effective Aug. 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](#).

The Commission deleted figures that repeated words when codifying subsection (e) above. PL 15-107 was enacted on November 9, 2007, and contained the following findings and purposes, in addition to severability and savings clause provisions.

Section 1. Findings and Purpose. The Legislature finds that Public Law No. 14-96 was enacted to amend Public Law No. 13-2.4, the “Appropriations and Budget Authority Act of 2003,” to supplement the budget of the Public School System (PSS) by returning the one percent Public Auditor fee that is assessed for all government agencies back to the PSS to be used exclusively to purchase textbooks. The Legislature also finds that Public Law No. 15-28, the “Appropriations and Budget Authority Act for 2007,” did not provide the same provision for the PSS. The Legislature further finds that this provision enabled PSS to acquire the needed textbooks and that PSS should be permanently exempted from the Public Auditor fee assessment so that it may use these funds specifically to purchase textbooks.

The Legislature finds that Article XV of the Constitution of the Northern Mariana Islands states not only that “[e]very person in the Northern Mariana Islands has the right to free, compulsory and public elementary and secondary education within age and educational levels provided by law,” but also that “[t]he educational system shall also provide support and guidance for students in assessing areas of interest and ability, in clarifying values and goals, and in providing students with clear and accurate information so they may gain the most from their educational experience.” In addition, the Legislature finds that because the Public School System receives federal funding that it is subject to the provisions of the No Child Left Behind Act of 2001 which holds schools and school districts accountable for results. This essentially means that schools are responsible for ensuring that students are learning, that school districts are accountable for results, that the school district should provide options and accessible information to parents about the quality of their child’s school, and that the school district should continuously work to improve teacher quality.

The Legislature further finds that parents and students are complaining about the lack of textbooks available to their children. This shortage of

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textbooks affects the quality of education a student is receiving and hampers a student's ability to study effectively at home or to complete homework assignments. The Legislature finds that this is a serious problem, as a textbook shortage will have an effect on the performance of students, schools, and the school district. If a school district is not performing, that district may be subject to scrutiny by the federal government and this in turn may affect federal funding. Ultimately, the most immediate and pressing concern is that students are not learning properly. The Constitution mandates that students gain the most from their educational experience, an objective that clearly cannot be realized without textbooks.

*Legislative Findings of 2022 Amendment.*— In addition to severability and savings clause provisions, PL 22-18 included the following Findings and Purposes section:

Section 1. Findings and Purposes.

The Legislature finds that the Office of the Public Auditor (OPA) performs a critical function of government, in auditing the receipt, possession and disbursement of public funds and deterring, detecting, and investigating waste, fraud, and abuse of public resources. OPA exercises oversight over the entire Commonwealth government, including autonomous agencies and public corporations. To fulfill its constitutional and statutory mandates, OPA requires sufficient funding and independence from political interference. Article III, section 12 of the Commonwealth Constitution guarantees OPA an annual budget of at least \$500,000, and Title 1, section 7831 of the Commonwealth Code provides that 1% of all locally generated funds appropriated by Commonwealth law as well as for all capital improvement projects, and not less than 1% of the total operations budgets of public corporations or other autonomous agencies of the Commonwealth, shall be deposited in a special account separate from the General Fund, and the funds shall be administered and expended by the Public Auditor without further appropriation. The Legislature finds that this “1% Public Auditor Fee” provides an essential framework to support OPA’s operations and ensure its independence and integrity.

The Legislature further finds that the Commonwealth Ports Authority (CPA) is an autonomous agency that plays a critical role in managing the Commonwealth’s airports and seaports. The CPA is not funded primarily by legislative appropriations, and instead relies heavily on federal grants as well as revenues generated from fees and rents. The Legislature recognizes that federal law and federal grant assurances require the use of airport revenues for airport operations, maintenance, and capital improvements, and prohibit the diversion of airport revenues towards non-airport related operations and activities. *Cf.* 49 U.S.C. § 47107(b); 49 U.S.C. § 47133(a).

The Legislature further recognizes that CPA and federal grantors have expressed concern that the payment of the 1% Public Auditor Fee from CPA’s airport revenues may constitute unlawful revenue diversion, and could lead to CPA’s placement in non-compliance with federal grant

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conditions, as well as sanctions. Federal grant conditions do, however, permit CPA to pay for OPA services from airport revenues in connection with airport operations, provided that payments are calculated and documented pursuant to an approved cost allocation plan. *Cf.* Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696 (Feb. 6, 1999). The Legislature further recognizes OPA's position that the 1% Public Auditor Fee is a reasonable and allowable cost for the use of airport revenues, based in part on federal regulations and guidance permitting the allocation of indirect costs, and that there is no final determination from federal grantors that the 1% Public Auditor Fee in fact constitutes unlawful revenue diversion. The Legislature also notes that the 1% Public Auditor Fee has never been cited as a finding in CPA's past audit reports.

Accordingly, the purpose of this Act is to exempt the Commonwealth Ports Authority from paying the 1% Public Auditor Fee as to airport revenues only. Seaport revenues shall still be subject to the 1% Public Auditor Fee. In addition, this Act permits the Office of the Public Auditor to charge CPA reasonable rates or fees for audits, enforcement actions, investigations, reviews, inspections, or other work actually conducted by OPA that is related to CPA's airport operations and activities, and to require CPA to pay for said services.