

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 596

50th Legislature, 1st Session, 2011

Tracking Number: .185425.2

Short Title: State Auditor Public Fund Recovery Counsel

Sponsor(s): Representatives Joseph Cervantes and Al Park and Others

Analyst: Eilani Gerstner

Date: March 4, 2011

Bill Summary:

Effective July 1, 2011, HB 596 amends the *Audit Act* to authorize the State Auditor to contract with outside counsel to pursue legal actions to recover public funds.

Fiscal Impact:

HB 596 does not contain an appropriation.

According to the Legislative Finance Committee (LFC) Fiscal Impact Report (FIR), the bill explicitly authorizes the State Auditor to contract with outside counsel to pursue certain legal proceedings to recover shortages of the funds identified by an audit. To the extent that the State Auditor chooses to contract with outside counsel to pursue recovery, the costs of legal fees and expenses could vary and would impact the Office of the State Auditor's (OSA's) budget.

Substantive Issues:

According to the FIR:

- The General Services Department and Public Schools Insurance Authority (PSIA) have the authority to seek recovery on behalf of state agencies and public schools.
- More often than not, PSIA engages in a legal contract when pursuing recoveries on a contingency basis.
- Therefore, contracted counsel is only compensated if funds are recovered and are only compensated a portion/percentage of funds recovered.

According to the OSA:

- Currently, the OSA only employs a General Counsel, so HB 596 would provide additional protection of taxpayer resources by explicitly allowing the State Auditor to seek outside expertise to pursue recovery of public funds.

- The *Audit Act* already allows the State Auditor to bring suit to enforce repayment or refund to the agency, but HB 596 would explicitly authorize the State Auditor to contract with outside counsel for the purposes of recovery.
- Financial audits, special audits, and other audit engagements conducted by the State Auditor may result in identifying shortages of funds for which an agency is accountable.
- For example, in 2009, the OSA conducted a special audit of the Jemez Mountain School District to determine the amount of funds embezzled from the district by the former business manager.
- Based on the procedures performed, the OSA determined there was sufficient and competent evidence to conclude that the former business manager embezzled approximately \$3.4 million from the district's bank accounts from January 8, 2002 through June 4, 2009.

Related Bills:

HB 66a *Transfer Depts. & Services to DFA*
HB 98a *Charter School Audit Monitoring*
HB 411 *State Agency Submission of Timely Audits*
HB 424 *Auditor Agency At-Risk for Fraud Designation*
SB 83 *Create State Inspector General Office*
CS/SB 423 *Auditor to Perform School District Audits*