

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 596

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO AUDITS; AUTHORIZING THE STATE AUDITOR TO CONTRACT WITH OUTSIDE COUNSEL TO PURSUE LEGAL ACTIONS TO RECOVER PUBLIC FUNDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 12-6-7 NMSA 1978 (being Laws 1969, Chapter 68, Section 7) is amended to read:

"12-6-7. SHORTAGES IN ACCOUNTS--SURETIES.--

A. The state auditor shall notify the appropriate surety on the official bond whenever an audit discloses a shortage in the accounts of any agency. Failure to notify the surety, however, does not release the surety from any obligation under the bond.

B. Sureties upon official bonds of agencies are not released from liability on official bonds until the state

underscored material = new  
[bracketed material] = delete

1 auditor has certified to them that the accounts of the agency  
2 have been examined and found to be correct and a clearance of  
3 liability is given them.

4 C. When necessary, the state auditor may institute  
5 legal proceedings against sureties upon official bonds of  
6 officers and employees. In such proceedings, the officer or  
7 employee may set up as a defense that errors have been  
8 committed by the state auditor in making charges against ~~him~~  
9 the officer or employee, or that ~~he~~ the officer or employee  
10 has been refused proper and legal credit by the state auditor,  
11 but the burden of proof is upon the officer or employee to show  
12 such facts.

13 D. The state auditor may contract with outside  
14 counsel to pursue the legal proceedings authorized by this  
15 section."

16 SECTION 2. Section 12-6-8 NMSA 1978 (being Laws 1969,  
17 Chapter 68, Section 8) is amended to read:

18 "12-6-8. REPAYMENT OF FUNDS.--If restitution has not been  
19 made in thirty days from the receipt by an agency of a report  
20 of an audit reflecting a shortage of funds for which the agency  
21 is accountable under law, ~~suit~~ an action to enforce repayment  
22 or refund to the agency, to recover damages or to seek other  
23 relief to address the shortage may be brought by the state  
24 auditor. The state auditor may contract with outside counsel  
25 to bring or assist in the enforcement action authorized by this

underscored material = new  
~~[bracketed material] = delete~~

1 section."

2 SECTION 3. EFFECTIVE DATE.--The effective date of the  
3 provisions of this act is July 1, 2011.

4 - 3 -

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25