F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 02/22/11
SPONSOR Stewart **LAST UPDATED** ____ **HB** 424

SHORT TITLE Auditor Agency At-Risk For Fraud Designation **SB** ____

ANALYST Archuleta

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NA	NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
New Mexico Correction Department (NMCD)

No Response Received From
State Auditor's Office (SAO)
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

House Bill 424 creates a new section of the Audit Act. The bill requires the state auditor to designate a state agency at risk for fraud, waste or abuse if the agency fails to submit a required audit report or agreed-upon procedures report within ninety days of the due date specified by the state auditor, or receives a disclaimer of opinion or an adverse opinion on its annual financial audit. Agencies designated at risk would then be required to submit monthly progress reports to the state auditor, and to submit the first such report within 30 days of the auditor's designation. The bill lists several mandatory elements that must be included by the designated agencies in the monthly report, including a detailed explanation of the agency's efforts to complete and submit its report, obstacles encountered in completing the report, and a projected completion date for the audit. The state auditor is required to publish on its web site a list of designated at risk agencies, and to submit that list to the governor, LFC, DFA, and other designated entities. The state auditor must remove an agency's at risk designation if the agency submits the required report or receives an unqualified or qualified opinion on its subsequent annual financial report.

FISCAL IMPLICATIONS

There is no fiscal impact associated with House Bill 424.

SIGNIFICANT ISSUES

The New Mexico Corrections Department cites the following significant issues:

> In the event an agency were to be designated as an "at-risk" agency, and the agency is the recipient of federal funds, the at risk designation could jeopardize the agency's federal grant awards as well as the ability to be awarded any additional federal grants.
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> For agencies that receive a disclaimer of opinion or an adverse opinion in their annual financial report, they would have to wait an additional year before they are removed from the list. It is possible for an agency to generally have good accounting practices, but due to issues in one area of the operation, e.g. capital assets. The state auditor should have some form of discretion to remove an agency from the at risk list upon the agency demonstrating that adequate corrective action has been taken to correct the problem that led to the disclaimer or adverse opinion. That would likely provide an incentive to the agency to resolve the problems more quickly.
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> There may be instances that audit reports are not submitted timely due to having financial staff leave the agency or be on extended due to illness, or the auditor failing to perform in accordance with the audit contract due to personal or family illness or other uncontrollable circumstances. If an agency were not have financial staff with sufficient familiarity with the accounting operation, that agency would likely not be able to complete the audit process without either replacing the staff. Even then, the replacement staff would have a difficult time in completing the audit due to lack of familiarity with the agency's operation. In the instance of an auditor's failure to perform due to incompetence, the agency would need to work with the state auditor to either replace the auditor with another auditor.
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> The state auditor should be required to determine the circumstances, within the ninety day period, as to why an audit report has not been submitted prior to placing the agency on the at risk list. An agency may require assistance or intervention from the state auditor to complete the audit report and such an investigation would disclose the need.

ADMINISTRATIVE IMPLICATIONS

NMCD is also concerned that if an agency's audit report is late due an agency losing staff, it would be difficult to hire staff due to the hiring freeze in this current economic climate. It is often difficult to get beyond the hurdles in the hiring exception process.

DA/mew