

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 411

50th Legislature, 1st Session, 2011

Tracking Number: .183159.1SA

Short Title: State Agency Submission of Timely Audits

Sponsor(s): Representatives Luciano “Lucky” Varela and Joni Marie Gutierrez and Others

Analyst: Eilani Gerstner

Date: February 18, 2011

Bill Summary:

Effective July 1, 2012, HB 411:

- amends provisions in current law relating to public finance to allow:
 - the State Budget Division of the Department of Finance and Administration (DFA) to temporarily withhold an allotment to a state agency or state institution that has failed to submit an audit report required by the *Audit Act*; and
 - the Secretary of Finance and Administration to temporarily withhold a distribution to a municipality or county that has failed to submit certain audits or certain financial reports;
- adds a new section to the *Department of Finance and Administration Act* to grant the secretary enforcement powers over entities that fail to submit an audit report as required by the *Audit Act*, and defines procedures for withholding funding from such entities; and
- amends the *Audit Act* to require the State Auditor to:
 - in the case that a school district, charter school, or regional education cooperative (REC) has failed to submit a required audit report within ninety days of the due date:
 - add the Legislative Finance Committee (LFC) as an agency that must be notified (see “Background,” below); and
 - add the condition that, before submitting notification, the State Auditor has investigated the matter and attempted to negotiate, but the entity had not made satisfactory progress towards compliance with the *Audit Act*.
 - notify the LFC and the secretary if:
 - a state agency, state institution, municipality, or county has failed to submit a required audit report within ninety days of the due date specified by the State Auditor; and

- the State Auditor has investigated the matter and attempted to negotiate with the state agency, state institution, municipality, or county but the state agency, state institution, municipality, or county has not made satisfactory progress toward compliance with the *Audit Act*.

Fiscal Impact:

HB 411 does not contain an appropriation.

Fiscal Issues:

The Office of the State Auditor (OSA) indicates that HB 411 has no significant fiscal impacts to the office's operating budget.

Substantive Issues:

- The Attorney General's Office (AGO) analysis of HB 411 indicates the following potential legal issues:
 - HB 411 does not provide a "right of action" for entities that do not agree with the secretary's determination to temporarily withhold funds; and
 - as currently written, a state agency, state institution, municipality, or county will likely have to challenge a decision by the secretary in the court of law; therefore,
 - the AGO recommends that the bill should provide a detailed mechanism for review of final decisions and subsequent reviews.
- The New Mexico Municipal League's analysis of HB 411 indicates that withholding portions of distributions from a municipality could compromise the ability of the municipality to provide essential services to the community.
- An analysis of HB 411 from Public Education Department (PED) was not available at the publication of this Legislative Education Study Committee analysis.

Background:

In 2009, the *Audit Act* was amended to require the State Auditor to notify PED if a school district, charter school, or REC has failed to submit a required audit report within ninety days of the due date. The provisions in HB 411 add the requirements that the State Auditor also:

- notify the LFC; and
- notify the LFC and PED only if the auditor has investigated the matter and attempted to negotiate with the school district, charter school, or REC, but the entity has not made satisfactory progress towards compliance with the *Audit Act*.

Also in 2009, legislation was enacted to allow PED to withhold up to 7.0 percent of a school district's or charter school's state equalization guarantee allotment for failure to submit an annual financial audit. HB 411 adds similar provisions to allow DFA to withhold funding for state agencies, state institutions, municipalities, and counties that are not in compliance with the *Audit Act*.

Related Bills:

HB 98 *Charter School Audit Monitoring*

HB 424 *Auditor Agency At-Risk for Fraud Designation*

SB 141 *No Education Dept. Auditor Approval*

SB 423 *Auditor to Perform School District Audits*