AN ACT

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

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

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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. Amounts recovered by or with the assistance of

16   outside counsel shall be deposited in the state auditor

17   suspense fund."

18   SECTION 2. Section 12-6-8 NMSA 1978 (being Laws 1969,

19   Chapter 68, Section 8) is amended to read:

20   "12-6-8. REPAYMENT OF FUNDS.--

21   A.   If restitution has not been made in thirty days

22   from the receipt by an agency of a report of an audit

23   reflecting a shortage of funds for which the agency is

24   accountable under law, [suit] an action to enforce repayment or

25   refund to the agency, to recover damages or to seek other

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1   relief to address the shortage may be brought by the state

2   auditor.

3   　　　　　B. The state auditor may contract with outside

4   counsel to bring or assist in the enforcement action authorized

5   by this section. Amounts recovered by or with the assistance

6   of outside counsel shall be deposited in the state auditor

7   suspense fund."

8   　　　　SECTION 3. A new section of the Audit Act is enacted to

9   read:

10 　　　　"[NEW MATERIAL] STATE AUDITOR SUSPENSE FUND.--

11 　　　　　A. For the purpose of making disbursements and

12 distributions pursuant to this section, the "state auditor

13 suspense fund" is created in the state treasury.

14 　　　　　B. When pursuing a legal action by or with the

15 assistance of outside counsel pursuant to Sections 12-6-7 and

16 12-6-8 NMSA 1978, all proceeds of the action received in

17 satisfaction of the claim shall be transferred to the state

18 auditor and deposited into the state auditor suspend fund.

19 Attorney fees and costs of litigation paid by the state auditor

20 shall be disbursed from the suspense fund to reimburse the

21 state auditor. After reimbursement, the balance of the

22 proceeds shall be distributed to the appropriate fund or funds

23 from which the shortage occurred.

24 　　　　　C. Disbursements shall be made from the fund upon

25 warrants drawn by the secretary of finance and adminstration

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1 pursuant to vouchers signed by the state auditor or the state

2 auditor's designated representative."

3   **SECTION 4.** EFFECTIVE DATE.--The effective date of the

4 provisions of this act is July 1, 2011.

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