

AN ACT

RELATING TO PUBLIC MONEY; REQUIRING NOTIFICATIONS TO THE SECRETARY OF FINANCE AND ADMINISTRATION OF THE FAILURE TO TIMELY SUBMIT CERTAIN AUDITS OR CERTAIN FINANCIAL REPORTS; PROVIDING FOR PECUNIARY SANCTIONS AGAINST STATE AGENCIES AND STATE INSTITUTIONS FOR FAILING TO TIMELY SUBMIT AUDITS; PROVIDING FOR PECUNIARY SANCTIONS AGAINST MUNICIPALITIES AND COUNTIES FOR FAILING TO TIMELY SUBMIT AUDITS OR FINANCIAL REPORTS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2009.

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

**SECTION 1.** Section 6-3-6 NMSA 1978 (being Laws 1957, Chapter 253, Section 7, as amended) is amended to read:

"6-3-6. STATE BUDGET DIVISION--PERIODIC ALLOTMENTS.--

A. The state budget division, subject to the approval of the secretary of finance and administration, is authorized to provide rules for the periodic allotment of funds that may be expended by any state agency.

B. The expenditures of any state agency as defined in Section 6-3-1 NMSA 1978, for the first six-month period of each odd-numbered fiscal year shall be limited to one-half of the appropriation or approved budget, whichever is less, for that fiscal year. This restriction does not apply to those agencies whose operations are more efficiently measured by

periods other than a fiscal year, including but not limited to the New Mexico legislative council, legislative committees, the intertribal ceremonial and the New Mexico state fair. Expenditures of the intertribal ceremonial office and the New Mexico state fair shall be governed by regulation of the department of finance and administration. The department of finance and administration may also allow expenditure of more than one-half of the appropriation or approved budget for those agencies planning major expenditures for capital outlay in the first six months of the fiscal year, which would result in over-expenditure of the first six-month allocation.

C. Upon the direction of the secretary of finance and administration pursuant to Section 9-6-5.2 NMSA 1978, the state budget division shall temporarily withhold an allotment to a state agency or state institution that has failed to submit an audit report required by the Audit Act. The amount withheld and the number of periodic allotments subject to the withholding shall be as directed by the secretary."

**SECTION 2.** Section 6-6-2 NMSA 1978 (being Laws 1957, Chapter 250, Section 2, as amended) is amended to read:

"6-6-2. LOCAL GOVERNMENT DIVISION--POWERS AND DUTIES.-- The local government division of the department of finance and administration has the power and duty in relation to local public bodies to:

A. require each local public body to furnish and

file with the division, on or before June 1 of each year, a proposed budget for the next fiscal year;

B. examine each proposed budget and, on or before July 1 of each year, approve and certify to each local public body an operating budget for use pending approval of a final budget;

C. hold public hearings on proposed budgets;

D. make corrections, revisions and amendments to the proposed budgets as may be necessary to meet the requirements of law;

E. certify a final budget for each local public body to the appropriate governing body prior to the first Monday in September of each year. The budgets, when approved, are binding upon all tax officials of the state;

F. require periodic financial reports, at least quarterly, of local public bodies. The reports shall contain the pertinent details regarding applications for federal money or federal grants-in-aid or regarding federal money or federal grants-in-aid received, including details of programs, matching funds, personnel requirements, salary provisions and program numbers, as indicated in the catalog of federal domestic assistance, of the federal funds applied for and of those received;

G. notify the secretary of finance and administration if a municipality or county has failed to

submit two consecutive financial reports required by Subsection F of this section;

H. upon the approval of the secretary of finance and administration, authorize the transfer of funds from one budget item to another when the transfer is requested and a need exists meriting the transfer and the transfer is not prohibited by law. In case of a need necessitating the expenditure for an item not provided for in the budget, upon approval of the secretary of finance and administration, the budget may be revised to authorize the expenditures;

I. with written approval of the secretary of finance and administration, increase the total budget of any local public body in the event the local public body undertakes an activity, service, project or construction program that was not contemplated at the time the final budget was adopted and approved and which activity, service, project or construction program will produce sufficient revenue to cover the increase in the budget or the local public body has surplus funds on hand not necessary to meet the expenditures provided for in the budget with which to cover the increase in the budget; provided, however, that the attorney general shall review legal questions identified by the secretary arising in connection with such budget increase requests;

J. supervise the disbursement of funds to the end that expenditures will not be made in excess of budgeted items

or for items not budgeted and that there will not be illegal expenditures;

K. prescribe the form for all budgets, books, records and accounts for local public bodies; and

L. with the approval of the secretary of finance and administration, make rules relating to budgets, records, reports, handling and disbursement of public funds or in any manner relating to the financial affairs of the local public bodies."

**SECTION 3.** Section 7-1-6.15 NMSA 1978 (being Laws 1983, Chapter 211, Section 20, as amended) is amended to read:

"7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO MUNICIPALITIES OR COUNTIES.--

A. The provisions of this section apply to:

(1) any distribution to a municipality of gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978 or of interstate telecommunications gross receipts tax pursuant to Section 7-1-6.36 NMSA 1978;

(2) any transfer to a municipality with respect to any local option gross receipts tax imposed by that municipality;

(3) any transfer to a county with respect to any local option gross receipts tax imposed by that county;

(4) any distribution to a county pursuant to Section 7-1-6.16 NMSA 1978;

(5) any distribution to a municipality or a county of gasoline taxes pursuant to Section 7-1-6.9 NMSA 1978;

(6) any transfer to a county with respect to any tax imposed in accordance with the Local Liquor Excise Tax Act;

(7) any distribution to a municipality or a county of cigarette taxes pursuant to Sections 7-1-6.11, 7-12-15 and 7-12-16 NMSA 1978;

(8) any distribution to a county from the county government road fund pursuant to Section 7-1-6.26 NMSA 1978;

(9) any distribution to a municipality of gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978; and

(10) any distribution to a municipality of compensating taxes pursuant to Section 7-1-6.55 NMSA 1978.

B. If the secretary determines that any prior distribution or transfer to a political subdivision was erroneous, the secretary shall increase or decrease the next distribution or transfer amount for that political subdivision after the determination, except as provided in Subsection C, D or E of this section, by the amount necessary to correct the error. Subject to the provisions of Subsection E of this section, the secretary shall notify the political subdivision of the amount of each increase or decrease.

C. No decrease shall be made to current or future distributions or transfers to a political subdivision for any excess distribution or transfer made to that political subdivision more than one year prior to the calendar year in which the determination of the secretary was made.

D. The secretary, in lieu of recovery from the next distribution or transfer amount, may recover an excess distribution or transfer of one hundred dollars (\$100) or more to the political subdivision in installments from current and future distributions or transfers to that political subdivision pursuant to an agreement with the officials of the political subdivision whenever the amount of the distribution or transfer decrease for the political subdivision exceeds ten percent of the average distribution or transfer amount for that political subdivision for the twelve months preceding the month in which the secretary's determination is made; provided that for the purposes of this subsection, the "average distribution or transfer amount" shall be the arithmetic mean of the distribution or transfer amounts within the twelve months immediately preceding the month in which the determination is made.

E. Except for the provisions of this section, if the amount by which a distribution or transfer would be adjusted pursuant to Subsection B of this section is one hundred dollars (\$100) or less, no adjustment or notice need

be made.

F. The secretary is authorized to decrease a distribution to a municipality or county upon being directed to do so by the secretary of finance and administration pursuant to the State Aid Intercept Act or to redirect a distribution to the New Mexico finance authority pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement of the municipality or county and the New Mexico finance authority. Upon direction to decrease a distribution or notice to redirect a distribution to a municipality or county, the secretary shall decrease or redirect the next designated distribution, and succeeding distributions as necessary, by the amount of the state distributions intercept authorized by the secretary of finance and administration pursuant to the State Aid Intercept Act or by the amount of the state distribution intercept authorized pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement with the New Mexico finance authority. The secretary shall transfer the state distributions intercept amount to the municipal or county treasurer or other person designated by the secretary of finance and administration or to the New Mexico finance authority pursuant to written agreement to pay the debt service to avoid default on qualified local revenue bonds or meet other local revenue bond, loan or other debt obligations



of the municipality or county to the New Mexico finance authority.

G. Upon the direction of the secretary of finance and administration pursuant to Section 9-6-5.2 NMSA 1978, the secretary shall temporarily withhold a distribution to a municipality or county that has failed to submit an audit report required by the Audit Act or a financial report required by Subsection F of Section 6-6-2 NMSA 1978. The amount to be withheld, the source of the withheld distribution and the number of months that the distribution is to be withheld shall be as directed by the secretary of finance and administration. A distribution withheld pursuant to this subsection shall remain in the tax administration suspense fund until distributed to the municipality or county and shall not be distributed to the general fund."

**SECTION 4.** Section 9-6-1 NMSA 1978 (being Laws 1977, Chapter 247, Section 1) is amended to read:

"9-6-1. SHORT TITLE.--Sections 9-6-1 through 9-6-5.2 and 9-6-15 NMSA 1978 may be cited as the "Department of Finance and Administration Act"."

**SECTION 5.** A new section of the Department of Finance and Administration Act, Section 9-6-5.2 NMSA 1978, is enacted to read:

"9-6-5.2. FAILURE TO TIMELY SUBMIT AUDIT REPORTS OR FINANCIAL REPORTS--ENFORCEMENT POWERS OF SECRETARY.--

A. Upon notification by the state auditor pursuant to Subsection G of Section 12-6-3 NMSA 1978 that a state agency, state institution, municipality or county has failed to submit an audit report as required by the Audit Act, the secretary of finance and administration shall order the agency, institution, municipality or county to submit monthly financial reports to the department of finance and administration until all past-due audit reports have been submitted to the state auditor and the secretary is satisfied that the agency, institution, municipality or county is in compliance with all financial and audit requirements.

B. If, ninety days after an order has been issued pursuant to Subsection A of this section to a state agency or state institution subject to periodic allotments, the agency or institution has not submitted all past-due reports or has not otherwise made progress, satisfactory to the state auditor, toward compliance with the Audit Act, the secretary may direct the state budget division to temporarily withhold periodic allotments to the agency or institution pursuant to Section 6-3-6 NMSA 1978. The amounts withheld and the period of time for which the allotments are to be withheld shall be determined by the secretary subject to the following guidelines:

(1) the initial amount withheld shall not exceed five percent of the allotment and shall be for a period

of no more than three months;

(2) every three months, the secretary shall determine if the agency or institution has submitted all past-due audit reports or has otherwise made progress, satisfactory to the state auditor, toward compliance with the Audit Act. If the secretary determines that past-due reports have not been submitted and that there has been inadequate progress, the secretary may direct that the amount being currently withheld be increased by an additional amount, up to another five percent of the allotment, for an additional period of up to three months; and

(3) upon a determination that all past-due audit reports have been submitted or that the agency or institution is otherwise making progress, satisfactory to the state auditor, toward compliance with the Audit Act, the secretary shall direct that all withheld amounts be distributed to the agency or institution and that future allotments shall be made in full.

C. If, ninety days after an order has been issued pursuant to Subsection A of this section to a municipality or county, the municipality or county has not submitted all past-due reports or has not otherwise made progress, satisfactory to the state auditor, toward compliance with the Audit Act, the secretary may direct the secretary of taxation and revenue to temporarily withhold distributions to the municipality or

county pursuant to Section 7-1-6.15 NMSA 1978. The amounts withheld, the source of the amounts and the period of time for which the distributions are to be withheld shall be determined by the secretary of finance and administration subject to the following guidelines:

(1) transfers to a county or municipality of receipts from any local option gross receipts tax or from a tax imposed pursuant to the Local Liquor Excise Tax Act shall not be withheld;

(2) the source and amount of a withheld distribution shall be determined in a manner that will not:

(a) impair any outstanding bonds or other obligations of the municipality or county; or

(b) interrupt a redirected distribution to the New Mexico finance authority pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement of the municipality or county and the New Mexico finance authority;

(3) the initial amount withheld shall not exceed five percent of the amount that would otherwise be distributed to the municipality or county pursuant to the Tax Administration Act and shall be for a period of no more than three months;

(4) every three months, the secretary of finance and administration shall determine if the municipality

or county has submitted all past-due audit reports or has otherwise made progress, satisfactory to the state auditor, toward compliance with the Audit Act. If the secretary determines that past-due reports have not been submitted and that there has been inadequate progress, the secretary may direct that the amount being currently withheld be increased by an additional amount, up to another five percent of the amount that would otherwise be distributed, for an additional period of up to three months; and

(5) upon a determination that all past-due audit reports have been submitted or that the municipality or county is otherwise making progress, satisfactory to the state auditor, toward compliance with the Audit Act, the secretary shall direct that all withheld amounts be distributed to the municipality or county and that future distributions shall be made in full.

D. After receiving notice from the local government division of the department of finance and administration required by Subsection G of Section 6-6-2 NMSA 1978 that a municipality or county has failed to submit two consecutive financial reports pursuant to Subsection F of that section, the secretary may direct the secretary of taxation and revenue to temporarily withhold distributions to the municipality or county pursuant to Section 7-1-6.15 NMSA 1978.

The amounts withheld, the source of the amounts and the period

of time for which the distributions are to be withheld shall be determined by the secretary of finance and administration subject to the following guidelines:

(1) transfers to a county or municipality of receipts from any local option gross receipts tax or from a tax imposed pursuant to the Local Liquor Excise Tax Act shall not be withheld;

(2) the source and amount of a withheld distribution shall be determined in a manner that will not:

(a) impair any outstanding bonds or other obligations of the municipality or county; or

(b) interrupt a redirected distribution to the New Mexico finance authority pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement of the municipality or county and the New Mexico finance authority;

(3) the initial amount withheld shall not exceed five percent of the amount that would otherwise be distributed to the municipality or county pursuant to the Tax Administration Act and shall be for a period of no more than three months;

(4) every three months, the secretary of finance and administration shall determine if the municipality or county has submitted all past-due financial reports or has otherwise made progress, satisfactory to the local government

division, toward compliance with the law. If the secretary determines that past-due reports have not been submitted and that there has been inadequate progress, the secretary may direct that the amount being currently withheld be increased by an additional amount, up to another five percent of the amount that would otherwise be distributed, for an additional period of up to three months; and

(5) upon a determination that all past-due financial reports have been submitted or that the municipality or county is otherwise making progress, satisfactory to the local government division, toward compliance with the law, the secretary shall direct that all withheld amounts be distributed to the municipality or county and that future distributions shall be made in full."

**SECTION 6.** Section 12-6-3 NMSA 1978 (being Laws 1969, Chapter 68, Section 3, as amended by Laws 2009, Chapter 273, Section 1 and by Laws 2009, Chapter 283, Section 3) is amended to read:

"12-6-3. ANNUAL AND SPECIAL AUDITS--FINANCIAL EXAMINATIONS.--

A. Except as otherwise provided in Subsection B of this section, the financial affairs of every agency shall be thoroughly examined and audited each year by the state auditor, personnel of the state auditor's office designated by the state auditor or independent auditors approved by the

state auditor. The comprehensive annual financial report for the state shall be thoroughly examined and audited each year by the state auditor, personnel of the state auditor's office designated by the state auditor or independent auditors approved by the state auditor. The audits shall be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor.

B. The examination of the financial affairs of a local public body shall be determined according to its annual revenue each year. All examinations and compliance with agreed-upon procedures shall be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor. If a local public body has an annual revenue, calculated on a cash basis of accounting, exclusive of capital outlay funds, federal or private grants or capital outlay funds disbursed directly by an administrating agency, of:

(1) less than ten thousand dollars (\$10,000) and does not directly expend at least fifty percent of, or the remainder of, a single capital outlay award, it is exempt from submitting and filing quarterly reports and final budgets for approval to the local government division of the department of finance and administration and from any financial reporting to the state auditor;

(2) at least ten thousand dollars (\$10,000) but less than fifty thousand dollars (\$50,000), it shall



comply only with the applicable provisions of Section 6-6-3 NMSA 1978;

(3) less than fifty thousand dollars (\$50,000) and directly expends at least fifty percent of, or the remainder of, a single capital outlay award, it shall submit to the state auditor a financial report consistent with agreed-upon procedures for financial reporting that are:

(a) focused solely on the capital outlay funds directly expended;

(b) economically feasible for the affected local public body; and

(c) determined by the state auditor after consultation with the affected local public body;

(4) at least fifty thousand dollars (\$50,000) but not more than two hundred fifty thousand dollars (\$250,000), it shall submit to the state auditor, at a minimum, a financial report that includes a schedule of cash basis comparison and that is consistent with agreed-upon procedures for financial reporting that are:

(a) narrowly tailored to the affected local public body;

(b) economically feasible for the affected local public body; and

(c) determined by the state auditor after consultation with the affected local public body;

(5) at least fifty thousand dollars (\$50,000) but not more than two hundred fifty thousand dollars (\$250,000) and expends any capital outlay funds, it shall submit to the state auditor, at a minimum, a financial report that includes a schedule of cash basis comparison and a test sample of expended capital outlay funds and that is consistent with agreed-upon procedures for financial reporting that are:

(a) narrowly tailored to the affected local public body;

(b) economically feasible for the affected local public body; and

(c) determined by the state auditor after consultation with the affected local public body;

(6) at least two hundred fifty thousand dollars (\$250,000) but not more than five hundred thousand dollars (\$500,000), it shall submit to the state auditor, at a minimum, a compilation of financial statements and a financial report consistent with agreed-upon procedures for financial reporting that are:

(a) economically feasible for the affected local public body; and

(b) determined by the state auditor after consultation with the affected local public body; or

(7) five hundred thousand dollars (\$500,000) or more, it shall be thoroughly examined and audited as

required by Subsection A of this section.

C. In addition to the annual audit, the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part.

D. Annual financial and compliance audits of agencies under the oversight of the financial control division of the department of finance and administration shall be completed and submitted by an agency and independent auditor to the state auditor no later than sixty days after the state auditor receives notification from the financial control division to the effect that an agency's books and records are ready and available for audit. The local government division of the department of finance and administration shall inform the state auditor of the compliance or failure to comply by a local public body with the provisions of Section 6-6-3 NMSA 1978.

E. In order to comply with United States department of housing and urban development requirements, the financial affairs of a public housing authority that is determined to be a component unit in accordance with generally accepted accounting principles, other than a housing department of a local government or a regional housing authority, at the public housing authority's discretion, may be audited separately from the audit of its local primary government entity. If a separate audit is made, the public

housing authority audit shall be included in the local primary government entity audit and need not be conducted by the same auditor who audits the financial affairs of the local primary government entity.

F. The state auditor shall notify the legislative finance committee and the public education department if:

(1) a school district, charter school or regional education cooperative has failed to submit a required audit report within ninety days of the due date specified by the state auditor; and

(2) the state auditor has investigated the matter and attempted to negotiate with the school district, charter school or regional education cooperative but the school district, charter school or regional education cooperative has not made satisfactory progress toward compliance with the Audit Act.

G. The state auditor shall notify the legislative finance committee and the secretary of finance and administration if:

(1) 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

(2) 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."

**SECTION 7. EFFECTIVE DATE.**--The effective date of the  
provisions of this act is July 1, 2012.\_\_\_\_\_

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