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HOUSE BILL 411

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

INTRODUCED BY

Luciano "Lucky" Varela

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

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1 approval of the secretary of finance and administration, is
2 authorized to provide [~~regulations~~] rules for the periodic
3 allotment of funds that may be expended by any state agency.

4 B. The expenditures of any state agency as defined
5 in Section [~~11-4-1.1 NMSA 1953~~] 6-3-1 NMSA 1978, for the first
6 [~~six-months~~] six-month period of each odd-numbered fiscal year
7 shall be limited to one-half of the appropriation or approved
8 budget, whichever is less, for that fiscal year. This
9 restriction [~~shall~~] does not apply to those agencies whose
10 operations are more efficiently measured by periods other than
11 a fiscal year, including but not limited to the New Mexico
12 legislative council, legislative committees, the intertribal
13 [~~Indian~~] ceremonial and the New Mexico state fair.

14 Expenditures of the intertribal [~~Indian~~] ceremonial office and
15 the New Mexico state fair shall be governed by regulation of
16 the department of finance and administration. The department
17 of finance and administration may also allow expenditure of
18 more than one-half of the appropriation or approved budget for
19 those agencies planning major expenditures for capital outlay
20 in the first six months of the fiscal year, which would result
21 in over-expenditure of the first [~~six-months~~] six-month
22 allocation.

23 C. Upon the direction of the secretary of finance
24 and administration pursuant to Section 9-6-5.2 NMSA 1978, the
25 state budget division shall temporarily withhold an allotment

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1 to a state agency or state institution that has failed to
2 submit an audit report required by the Audit Act. The amount
3 withheld and the number of periodic allotments subject to the
4 withholding shall be as directed by the secretary."

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

7 "6-6-2. LOCAL GOVERNMENT DIVISION--POWERS AND DUTIES.--

8 The local government division of the department of finance and
9 administration has the power and duty in relation to local
10 public bodies to:

11 A. require each local public body to furnish and
12 file with the division, on or before June 1 of each year, a
13 proposed budget for the next fiscal year;

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

18 C. hold public hearings on proposed budgets;

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

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

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

10 G. notify the secretary of finance and
11 administration if a municipality or county has failed to submit
12 two consecutive financial reports required by Subsection F of
13 this section;

14 [~~G.~~] H. upon the approval of the secretary of
15 finance and administration, authorize the transfer of funds
16 from one budget item to another when the transfer is requested
17 and a need exists meriting the transfer and the transfer is not
18 prohibited by law. In case of a need necessitating the
19 expenditure for an item not provided for in the budget, upon
20 approval of the secretary of finance and administration, the
21 budget may be revised to authorize the expenditures;

22 [~~H.~~] I. with written approval of the secretary of
23 finance and administration, increase the total budget of any
24 local public body in the event the local public body undertakes
25 an activity, service, project or construction program that was

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1 not contemplated at the time the final budget was adopted and
2 approved and which activity, service, project or construction
3 program will produce sufficient revenue to cover the increase
4 in the budget or the local public body has surplus funds on
5 hand not necessary to meet the expenditures provided for in the
6 budget with which to cover the increase in the budget;
7 provided, however, that the attorney general shall review legal
8 questions identified by the secretary arising in connection
9 with such budget increase requests;

10 [~~I.~~] J. supervise the disbursement of funds to the
11 end that expenditures will not be made in excess of budgeted
12 items or for items not budgeted and that there will not be
13 illegal expenditures;

14 [~~J.~~] K. prescribe the form for all budgets, books,
15 records and accounts for local public bodies; and

16 [~~K.~~] L. with the approval of the secretary of
17 finance and administration, make rules relating to budgets,
18 records, reports, handling and disbursement of public funds or
19 in any manner relating to the financial affairs of the local
20 public bodies."

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

23 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO
24 MUNICIPALITIES OR COUNTIES.--

25 A. The provisions of this section apply to:

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

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

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

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

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

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

17 (7) any distribution to a municipality or a
18 county of cigarette taxes pursuant to Sections 7-1-6.11,
19 7-12-15 and 7-12-16 NMSA 1978;

20 (8) any distribution to a county from the
21 county government road fund pursuant to Section 7-1-6.26 NMSA
22 1978;

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

25 (10) any distribution to a municipality of

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1 compensating taxes pursuant to Section 7-1-6.55 NMSA 1978.

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

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

16 D. The secretary, in lieu of recovery from the next
17 distribution or transfer amount, may recover an excess
18 distribution or transfer of one hundred dollars (\$100) or more
19 to the political subdivision in installments from current and
20 future distributions or transfers to that political subdivision
21 pursuant to an agreement with the officials of the political
22 subdivision whenever the amount of the distribution or transfer
23 decrease for the political subdivision exceeds ten percent of
24 the average distribution or transfer amount for that political
25 subdivision for the twelve months preceding the month in which

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1 the secretary's determination is made; provided that for the
2 purposes of this subsection, the "average distribution or
3 transfer amount" shall be the arithmetic mean of the
4 distribution or transfer amounts within the twelve months
5 immediately preceding the month in which the determination is
6 made.

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

12 F. The secretary is authorized to decrease a
13 distribution to a municipality or county upon being directed to
14 do so by the secretary of finance and administration pursuant
15 to the State Aid Intercept Act or to redirect a distribution to
16 the New Mexico finance authority pursuant to an ordinance or a
17 resolution passed by the county or municipality and a written
18 agreement of the municipality or county and the New Mexico
19 finance authority. Upon direction to decrease a distribution
20 or notice to redirect a distribution to a municipality or
21 county, the secretary shall decrease or redirect the next
22 designated distribution, and succeeding distributions as
23 necessary, by the amount of the state distributions intercept
24 authorized by the secretary of finance and administration
25 pursuant to the State Aid Intercept Act or by the amount of the

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1 state distribution intercept authorized pursuant to an
2 ordinance or a resolution passed by the county or municipality
3 and a written agreement with the New Mexico finance authority.
4 The secretary shall transfer the state distributions intercept
5 amount to the municipal or county treasurer or other person
6 designated by the secretary of finance and administration or to
7 the New Mexico finance authority pursuant to written agreement
8 to pay the debt service to avoid default on qualified local
9 revenue bonds or meet other local revenue bond, loan or other
10 debt obligations of the municipality or county to the New
11 Mexico finance authority.

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

25 SECTION 4. Section 9-6-1 NMSA 1978 (being Laws 1977,

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1 Chapter 247, Section 1) is amended to read:

2 "9-6-1. SHORT TITLE.--Sections [~~1 through 7 of this act~~]
3 9-6-1 through 9-6-5.2 and 9-6-15 NMSA 1978 may be cited as the
4 "Department of Finance and Administration Act"."

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

8 "9-6-5.2. [NEW MATERIAL] FAILURE TO TIMELY SUBMIT AUDIT
9 REPORTS OR FINANCIAL REPORTS--ENFORCEMENT POWERS OF
10 SECRETARY.--

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

22 B. If, ninety days after an order has been issued
23 pursuant to Subsection A of this section to a state agency or
24 state institution subject to periodic allotments, the agency or
25 institution has not submitted all past-due reports or has not

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1 otherwise made progress, satisfactory to the state auditor,
2 toward compliance with the Audit Act, the secretary may direct
3 the state budget division to temporarily withhold periodic
4 allotments to the agency or institution pursuant to Section
5 6-3-6 NMSA 1978. The amounts withheld and the period of time
6 for which the allotments are to be withheld shall be determined
7 by the secretary subject to the following guidelines:

8 (1) the initial amount withheld shall not
9 exceed five percent of the allotment and shall be for a period
10 of no more than three months;

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

21 (3) upon a determination that all past-due
22 audit reports have been submitted or that the agency or
23 institution is otherwise making progress, satisfactory to the
24 state auditor, toward compliance with the Audit Act, the
25 secretary shall direct that all withheld amounts be distributed

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1 to the agency or institution and that future allotments shall
2 be made in full.

3 C. If, ninety days after an order has been issued
4 pursuant to Subsection A of this section to a municipality or
5 county, the municipality or county has not submitted all past-
6 due reports or has not otherwise made progress, satisfactory to
7 the state auditor, toward compliance with the Audit Act, the
8 secretary may direct the secretary of taxation and revenue to
9 temporarily withhold distributions to the municipality or
10 county pursuant to Section 7-1-6.15 NMSA 1978. The amounts
11 withheld, the source of the amounts and the period of time for
12 which the distributions are to be withheld shall be determined
13 by the secretary of finance and administration subject to the
14 following guidelines:

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

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

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

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

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1 agreement of the municipality or county and the New Mexico
2 finance authority;

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

8 (4) every three months, the secretary of
9 finance and administration shall determine if the municipality
10 or county has submitted all past-due audit reports or has
11 otherwise made progress, satisfactory to the state auditor,
12 toward compliance with the Audit Act. If the secretary
13 determines that past-due reports have not been submitted and
14 that there has been inadequate progress, the secretary may
15 direct that the amount being currently withheld be increased by
16 an additional amount, up to another five percent of the amount
17 that would otherwise be distributed, for an additional period
18 of up to three months; and

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

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1 D. After receiving notice from the local government
2 division of the department of finance and administration
3 required by Subsection G of Section 6-6-2 NMSA 1978 that a
4 municipality or county has failed to submit two consecutive
5 financial reports pursuant to Subsection F of that section, the
6 secretary may direct the secretary of taxation and revenue to
7 temporarily withhold distributions to the municipality or
8 county pursuant to Section 7-1-6.15 NMSA 1978. The amounts
9 withheld, the source of the amounts and the period of time for
10 which the distributions are to be withheld shall be determined
11 by the secretary of finance and administration subject to the
12 following guidelines:

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

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

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

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

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

6 (4) every three months, the secretary of
7 finance and administration shall determine if the municipality
8 or county has submitted all past-due financial reports or has
9 otherwise made progress, satisfactory to the local government
10 division, toward compliance with the law. If the secretary
11 determines that past-due reports have not been submitted and
12 that there has been inadequate progress, the secretary may
13 direct that the amount being currently withheld be increased by
14 an additional amount, up to another five percent of the amount
15 that would otherwise be distributed, for an additional period
16 of up to three months; and

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

24 SECTION 6. Section 12-6-3 NMSA 1978 (being Laws 1969,
25 Chapter 68, Section 3, as amended by Laws 2009, Chapter 273,

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1 Section 1 and by Laws 2009, Chapter 283, Section 3) is amended
2 to read:

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

5 A. Except as otherwise provided in Subsection B of
6 this section, the financial affairs of every agency shall be
7 thoroughly examined and audited each year by the state auditor,
8 personnel of the state auditor's office designated by the state
9 auditor or independent auditors approved by the state auditor.
10 The comprehensive annual financial report for the state shall
11 be thoroughly examined and audited each year by the state
12 auditor, personnel of the state auditor's office designated by
13 the state auditor or independent auditors approved by the state
14 auditor. The audits shall be conducted in accordance with
15 generally accepted auditing standards and rules issued by the
16 state auditor.

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

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1 agency, of:

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

9 (2) at least ten thousand dollars (\$10,000)
10 but less than fifty thousand dollars (\$50,000), it shall comply
11 only with the applicable provisions of Section 6-6-3 NMSA 1978;

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

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

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

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

23 (4) at least fifty thousand dollars (\$50,000)
24 but not more than two hundred fifty thousand dollars
25 (\$250,000), it shall submit to the state auditor, at a minimum,

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1 a financial report that includes a schedule of cash basis
2 comparison and that is consistent with agreed-upon procedures
3 for financial reporting that are:

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

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

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

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

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

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

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

23 (6) at least two hundred fifty thousand
24 dollars (\$250,000) but not more than five hundred thousand
25 dollars (\$500,000), it shall submit to the state auditor, at a

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1 minimum, a compilation of financial statements and a financial
2 report consistent with agreed-upon procedures for financial
3 reporting that are:

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

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

8 (7) five hundred thousand dollars (\$500,000)
9 or more, it shall be thoroughly examined and audited as
10 required by Subsection A of this section.

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

14 D. Annual financial and compliance audits of
15 agencies under the oversight of the financial control division
16 of the department of finance and administration shall be
17 completed and submitted by an agency and independent auditor to
18 the state auditor no later than sixty days after the state
19 auditor receives notification from the financial control
20 division to the effect that an agency's books and records are
21 ready and available for audit. The local government division
22 of the department of finance and administration shall inform
23 the state auditor of the compliance or failure to comply by a
24 local public body with the provisions of Section 6-6-3 NMSA
25 1978.

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1 E. In order to comply with United States department
2 of housing and urban development requirements, the financial
3 affairs of a public housing authority that is determined to be
4 a component unit in accordance with generally accepted
5 accounting principles, other than a housing department of a
6 local government or a regional housing authority, at the public
7 housing authority's discretion, may be audited separately from
8 the audit of its local primary government entity. If a
9 separate audit is made, the public housing authority audit
10 shall be included in the local primary government entity audit
11 and need not be conducted by the same auditor who audits the
12 financial affairs of the local primary government entity.

13 ~~[E.]~~ F. The state auditor shall notify the
14 legislative finance committee and the public education
15 department ~~[within ten days when]~~ if:

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

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

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

4 (1) a state agency, state institution,
5 municipality or county has failed to submit a required audit
6 report within ninety days of the due date specified by the
7 state auditor; and

8 (2) the state auditor has investigated the
9 matter and attempted to negotiate with the state agency, state
10 institution, municipality or county but the state agency, state
11 institution, municipality or county has not made satisfactory
12 progress toward compliance with the Audit Act."

13 SECTION 7. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2012.