

1 SENATE BILL 257

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO PUBLIC AUDITS; AMENDING SECTIONS OF THE AUDIT ACT
12 TO INCLUDE CHARTER SCHOOLS IN THE DEFINITION OF "AGENCY", TO
13 ALLOW A GOVERNMENT COMPONENT UNIT TO BE AUDITED SEPARATELY FROM
14 ITS PRIMARY GOVERNMENT ENTITY AND TO REQUIRE THAT THE COMPONENT
15 UNIT'S AUDIT BE INCLUDED IN THE PRIMARY GOVERNMENT ENTITY'S
16 AUDIT.

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

19 SECTION 1. Section 12-6-2 NMSA 1978 (being Laws 1969,
20 Chapter 68, Section 2, as amended) is amended to read:

21 "12-6-2. DEFINITIONS.--As used in the Audit Act:

22 A. "agency" means:

23 (1) any department, institution, board,
24 bureau, court, commission, district or committee of the
25 government of the state, including district courts, magistrate

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1 or metropolitan courts, district attorneys and charitable
2 institutions for which appropriations are made by the
3 legislature;

4 (2) any political subdivision of the state,
5 created under either general or special act, that receives or
6 expends public money from whatever source derived, including
7 counties, county institutions, boards, bureaus or commissions;
8 municipalities; drainage, conservancy, irrigation or other
9 special districts; and school districts and charter schools;

10 (3) any entity or instrumentality of the state
11 specifically provided for by law, including the New Mexico
12 finance authority, the New Mexico mortgage finance authority
13 and the New Mexico lottery authority; and

14 (4) every office or officer of any entity
15 listed in Paragraphs (1) through (3) of this subsection; and

16 B. "local public body" means a mutual domestic
17 water consumers association, a land grant, an incorporated
18 municipality or a special district."

19 **SECTION 2.** Section 12-6-3 NMSA 1978 (being Laws 1969,
20 Chapter 68, Section 3, as amended) is amended to read:

21 "12-6-3. ANNUAL AND SPECIAL AUDITS--FINANCIAL
22 EXAMINATIONS.--

23 A. Except as otherwise provided in Subsection B of
24 this section, the financial affairs of every agency shall be
25 thoroughly examined and audited each year by the state auditor,

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

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

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

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

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

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

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

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

15 (4) at least fifty thousand dollars (\$50,000)
16 but not more than two hundred fifty thousand dollars
17 (\$250,000), it shall submit to the state auditor, at a minimum,
18 a financial report that includes a schedule of cash basis
19 comparison and that is consistent with agreed-upon procedures
20 for financial reporting that are:

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

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

25 (c) determined by the state auditor

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1 after consultation with the affected local public body;

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

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

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

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

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

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

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

25 (7) five hundred thousand dollars (\$500,000)

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1 or more, it shall be thoroughly examined and audited as
2 required by Subsection A of this section.

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

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

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

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1 separate audit is made, the public housing authority audit
2 shall be included in the local primary government entity audit
3 and need not be conducted by the same auditor who audits the
4 financial affairs of the local primary government entity.

5 F. The financial affairs of a political subdivision
6 of the state that is determined to be a component unit of a
7 primary government entity in accordance with generally accepted
8 accounting principles, at the component unit's discretion, may
9 be audited separately from the audit of the component unit's
10 primary government entity. If the component unit chooses to
11 have a separate audit conducted, the component unit audit shall
12 be included in the primary government entity's audit but need
13 not be conducted by the same auditor that audits the financial
14 affairs of the primary government entity.

15 [~~F.~~] G. The state auditor shall notify the
16 legislative finance committee and the public education
17 department if:

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

22 (2) the state auditor has investigated the
23 matter and attempted to negotiate with the school district,
24 charter school or regional education cooperative but the school
25 district, charter school or regional education cooperative has

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1 not made satisfactory progress toward compliance with the Audit
2 Act.

3 [G.] H. The state auditor shall notify the
4 legislative finance committee and the secretary of finance and
5 administration if:

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

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

15 **SECTION 3. APPLICABILITY.**--The provisions of this act
16 apply to the financial affairs of an agency in fiscal year 2016
17 and all subsequent fiscal years.