

SENATE BILL 316

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Stuart Ingle

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO STATE AUDITS; ESTABLISHING A SINGULAR STATE AUDIT PROCESS FOR AGENCIES; REQUIRING OR PERMITTING CERTAIN FINANCIAL STATEMENT AUDITS IN ACCORDANCE WITH GENERALLY ACCEPTED GOVERNMENTAL AUDITING STANDARDS; CHANGING STANDARDS FOR EXAMINATION OF LOCAL PUBLIC BODY FINANCIAL AFFAIRS; CHANGING REQUIREMENTS PERTAINING TO FINANCIAL REPORTS OF LOCAL PUBLIC BODIES; PROVIDING FOR ANNUAL PERFORMANCE AUDITS; CHANGING ENTITIES TO BE NOTIFIED OF FAILURES TO SUBMIT AUDIT REPORTS; CHANGING REQUIREMENTS FOR AUDIT REPORTS; ALLOWING THE STATE AUDITOR TO DETERMINE THRESHOLDS FOR ANNUAL INVENTORIES

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CONDUCTED BY AGENCIES.

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

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

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

A. "agency" means:

(1) any department, institution, board, bureau, court, commission, district or committee of the government of the state, including district courts, magistrate or metropolitan courts, district attorneys and charitable institutions for which appropriations are made by the legislature;

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

~~[(3) any entity or instrumentality of the state specifically provided for by law, including the New Mexico finance authority, the New Mexico mortgage finance authority and the New Mexico lottery authority;]~~ and

~~[(4)]~~ (3) every office or officer of any entity listed in Paragraphs (1) ~~[through (3)]~~ and (2) of this

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subsection; ~~and~~

B. "legally separate entity" means an entity provided for by law that has a relationship to the state or any of its instrumentalities such that omission of that entity from the state's or instrumentality's financial statements would cause those statements to be incomplete or misleading, and includes the New Mexico finance authority, the New Mexico mortgage finance authority and the New Mexico lottery authority; and

~~[B-]~~ C. "local public body" means a mutual domestic water consumers association, a land grant, an incorporated municipality or a special district."

SECTION 2. Section 12-6-3 NMSA 1978 (being Laws 1969, Chapter 68, Section 3, as amended) 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]~~ the state, including each agency SPAC→that is included in the state's financial statements←SPAC, shall, as part of a single, combined audit, 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

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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]~~ examination and audit shall be conducted in accordance with ~~[generally accepted auditing standards and]~~ rules issued by the state auditor and, where applicable, generally accepted governmental auditing standards.

B. The financial statements of legally separate entities SPAC→and agencies not included in the state's financial statements ←SPAC shall be audited annually in accordance with generally accepted governmental auditing standards and made available for public release.

C. The financial statements of agencies may be audited annually in accordance with generally accepted governmental auditing standards and made available for public release if identified in and authorized within audit rules promulgated by the state auditor.

~~[B-]~~ D. 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]~~ the American institute of certified public accountants' professional standards and rules issued by the state auditor. If a local public body has an annual revenue, calculated on a cash basis of accounting,

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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)

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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

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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.

E. The financial activities of agencies SPAC→and that are included in the state's financial statement and their ←SPAC legally separate entities shall be subject to annual performance audits. Performance audits, as defined in audit rules promulgated by the state auditor, shall be completed by the end of the state's fiscal year. Performance audits shall examine an agency's or legally separate entity's use of resources in order to evaluate whether those resources are being used effectively and efficiently to:

- (1) ensure adherence to federal and state laws, rules, regulations, policies and procedures;
- (2) assess accounting and reporting processes of financial transactions, including commitments,

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authorizations and receipt and disbursement of funds;

(3) verify adherence to generally accepted accounting principles as applied by the state and agency-level financial reporting controls; and

(4) prevent and detect fraud and abuse of state resources and an agency's or legally separate entity's internal accounting controls designed to prevent accounting errors and violations of state and federal law and rules related to financial matters.

Sf1→F. Performance audits described in Subsection E of this section do not include program evaluations or fiscal reviews conducted by the legislative finance committee pursuant to Section 2-5-3 NMSA 1978.←Sf1

[G.] Sf1→F. G. ←Sf1 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.]~~

Sf1→G. H.←Sf1 The local government division of the .210151.5SA

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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.] Sfl→**H.** **I.**←Sfl 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.] Sfl→**I.** **J.**←Sfl The state auditor shall notify the [~~legislative finance committee and the~~] public education department if [~~(+)~~] 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~~

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~~district, charter school or regional education cooperative has not made satisfactory progress toward compliance with the Audit Act.~~

G.] Sfl → J. K. ← Sfl The state auditor shall notify the administrative office of the courts for the judiciary, the New Mexico legislative council for legislative agencies and the legislative finance committee, [and] the secretary of finance and administration and other relevant oversight agencies as determined by the state auditor if [~~(1) a state agency, state institution, municipality or county~~] any agency 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 3. Section 12-6-4 NMSA 1978 (being Laws 1969, Chapter 68, Section 4, as amended) is amended to read:

"12-6-4. AUDITING COSTS.--The reasonable cost of all audits shall be borne by the agency audited, except that:

SPAC → A. the cost of a single, combined audit of agencies that are included in the state's financial statement shall be borne by the department of finance and administration; ← SPAC

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SPAC→A B←SPAC. a public housing authority other than a regional housing authority shall not bear the cost of an audit conducted solely at the request of its local primary government entity; and

SPAC→B C←SPAC. the administrative office of the courts shall bear the cost [of auditing] for performance audits of the magistrate courts. A metropolitan court shall be treated as a single agency for the purpose of audit and shall be audited as a unit, and the cost of the audit shall be paid from the appropriation to the metropolitan court. The district courts of all counties within a judicial district shall be treated as a single agency for the purpose of audit and shall be audited as a unit, and the cost of the audit shall be paid from the appropriation to each judicial district. The court clerk trust account and the state treasurer account of each county's district court shall be included within the scope of the judicial district audit."

SECTION 4. Section 12-6-5 NMSA 1978 (being Laws 1969, Chapter 68, Section 5, as amended) is amended to read:

"12-6-5. REPORTS OF AUDITS.--

A. The state auditor shall cause a complete written report to be made of each annual audit, performance audit or special audit and examination made. Each report shall set out in detail, in a separate section, any significant violation, as defined in audit rules promulgated by the state auditor, of law

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or good accounting practices found by the audit or examination.
[~~Each report of a state agency shall include a list of individual deposit accounts and investment accounts held by each state agency audited.~~] A copy of the report shall be sent to the agency audited or examined; five days later, or earlier if the agency waives the five-day period, the report shall become a public record, at which time [~~copies shall be sent to:~~

~~(1) the secretary of finance and administration; and~~

~~(2) the legislative finance committee.~~

~~B. The state auditor shall send a copy of reports of state agencies to the department of finance and administration]~~ the state auditor shall post the report on the state auditor's website.

[~~G.~~] B. Within thirty days after receipt of the report, the agency audited may notify the state auditor of any errors in the report. If the state auditor is satisfied from data or documents at hand, or by an additional investigation, that the report is erroneous, the state auditor shall correct the report and [~~furnish copies of the corrected report to all parties receiving the original report]~~ post the corrected report on the state auditor's website."

SECTION 5. Section 12-6-10 NMSA 1978 (being Laws 1969, Chapter 68, Section 10, as amended) is amended to read:

"12-6-10. ANNUAL INVENTORY.--

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A. ~~[The governing authority of each agency shall]~~

At the end of each fiscal year, each agency shall conduct a physical inventory of movable chattels and equipment costing an amount as specified in audit rules promulgated by the state auditor that is more than five thousand dollars (\$5,000) and under the control of the governing authority. This inventory shall include all movable chattels and equipment procured through the capital program fund under Section 15-3B-16 NMSA 1978, which are assigned to the agency designated by the director of the facilities management division of the general services department as the user agency. The inventory shall list the chattels and equipment and the date and cost of acquisition. No agency shall be required to list any item costing ~~[five thousand dollars (\$5,000) or]~~ less than the amount specified in the audit rules promulgated by the state auditor. Upon completion, the inventory shall be certified by the governing authority as to correctness. Each agency shall maintain one copy in its files. ~~[At the time of the annual audit]~~ The state auditor, personnel of the state auditor's office or independent auditors approved by the state auditor shall ~~[ascertain]~~ evaluate the correctness of the inventory ~~[by generally accepted auditing procedures]~~ in the annual financial or performance audit.

B. The official or governing authority of each agency is chargeable on the official's or authority's official

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bond for the chattels and equipment shown in the inventory.

C. The general services department shall establish standards, including a uniform classification system of inventory items, and promulgate rules concerning the system of inventory accounting for chattels and equipment required to be inventoried, and the governing authority of each agency shall install the system. A museum collection list or catalogue record and a library accession record or shelf list shall constitute the inventories of museum collections and library collections SPAC→~~maintained by state agencies and local public bodies~~←SPAC.

D. No surety upon the official bond of any officer or employee of any agency shall be released from liability until a complete accounting has been had. All official bonds shall provide coverage of, or be written in a manner to include, inventories."

SECTION 6. Section 12-6-14 NMSA 1978 (being Laws 1969, Chapter 68, Section 14, as amended) is amended to read:

"12-6-14. CONTRACT AUDITS.--

A. The state auditor shall notify each agency designated for audit by an independent auditor, and the agency shall enter into a contract with an independent auditor of its choice in accordance with procedures prescribed by rules of the state auditor; provided, however, that a state-chartered charter school subject to oversight by the public education

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department or an agency subject to oversight by the higher education department shall receive approval from its oversight agency prior to submitting a recommendation for an independent auditor of its choice. The state auditor may select the auditor for an agency that has not submitted a recommendation within sixty days of notification by the state auditor to contract for the year being audited, and the agency being audited shall pay the cost of the audit. Each contract for auditing entered into between an agency and an independent auditor shall be approved in writing by the state auditor.

B. Payment of public funds may not be made to an independent auditor unless a contract is entered into and approved as provided in this section.

~~[B.]~~ C. The state auditor or personnel of the state auditor's office designated by the state auditor shall examine all audit reports [~~of audits of agencies~~] made pursuant to contract. Based upon demonstration of work in progress, the state auditor may authorize progress payments to the independent auditor by the agency being audited under contract. Final payment for services rendered by an independent auditor shall not be made until the state auditor makes a determination and written finding that the audit has been made in a competent manner in accordance with the provisions of the contract and applicable rules [~~by the state auditor~~]."

SECTION 7. APPLICABILITY.--The provisions of this act

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apply to audits conducted for fiscal year 2019 and subsequent fiscal years.

SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2018.

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