

1 SENATE BILL 316

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

4 Stuart Ingle

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10 AN ACT

11 RELATING TO STATE AUDITS; ESTABLISHING A SINGULAR STATE AUDIT
12 PROCESS FOR AGENCIES; REQUIRING OR PERMITTING CERTAIN FINANCIAL
13 STATEMENT AUDITS IN ACCORDANCE WITH GENERALLY ACCEPTED
14 GOVERNMENTAL AUDITING STANDARDS; CHANGING STANDARDS FOR
15 EXAMINATION OF LOCAL PUBLIC BODY FINANCIAL AFFAIRS; CHANGING
16 REQUIREMENTS PERTAINING TO FINANCIAL REPORTS OF LOCAL PUBLIC
17 BODIES; PROVIDING FOR ANNUAL PERFORMANCE AUDITS; CHANGING
18 ENTITIES TO BE NOTIFIED OF FAILURES TO SUBMIT AUDIT REPORTS;
19 CHANGING REQUIREMENTS FOR AUDIT REPORTS; ALLOWING THE STATE
20 AUDITOR TO DETERMINE THRESHOLDS FOR ANNUAL INVENTORIES
21 CONDUCTED BY AGENCIES.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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1 "12-6-2. DEFINITIONS.--As used in the Audit Act:

2 A. "agency" means:

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

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

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

19 [~~(4)~~] (3) every office or officer of any
20 entity listed in Paragraphs (1) [~~through (3)~~] and (2) of this
21 subsection; [~~and~~]

22 B. "legally separate entity" means an entity
23 provided for by law that has a relationship to the state or any
24 of its instrumentalities such that omission of that entity from
25 the state's or instrumentality's financial statements would

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1 cause those statements to be incomplete or misleading, and
2 includes the New Mexico finance authority, the New Mexico
3 mortgage finance authority and the New Mexico lottery
4 authority; and

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

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

10 "12-6-3. ANNUAL AND SPECIAL AUDITS--FINANCIAL
11 EXAMINATIONS.--

12 A. [~~Except as otherwise provided in Subsection B of~~
13 ~~this section]~~ The financial affairs of [~~every agency]~~ the
14 state, including each agency, shall, as part of a single,
15 combined audit, be thoroughly examined and audited each year by
16 the state auditor, personnel of the state auditor's office
17 designated by the state auditor or independent auditors
18 approved by the state auditor. The comprehensive annual
19 financial report for the state shall be thoroughly examined and
20 audited each year by the state auditor, personnel of the state
21 auditor's office designated by the state auditor or independent
22 auditors approved by the state auditor. The [~~audits]~~
23 examination and audit shall be conducted in accordance with
24 [~~generally accepted auditing standards and]~~ rules issued by the
25 state auditor and, where applicable, generally accepted

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1 governmental auditing standards.

2 B. The financial statements of legally separate
3 entities shall be audited annually in accordance with generally
4 accepted governmental auditing standards and made available for
5 public release.

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

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

22 (1) less than ten thousand dollars (\$10,000)
23 and does not directly expend at least fifty percent of, or the
24 remainder of, a single capital outlay award, it is exempt from
25 submitting and filing quarterly reports and final budgets for

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1 approval to the local government division of the department of
2 finance and administration and from any financial reporting to
3 the state auditor;

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

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

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

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

16 (c) determined by the state auditor
17 ~~[after consultation with the affected local public body];~~

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

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

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

3 (c) determined by the state auditor
4 ~~[after consultation with the affected local public body];~~

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

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

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

16 (c) determined by the state auditor
17 ~~[after consultation with the affected local public body];~~

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

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

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1 (b) determined by the state auditor
2 [~~after consultation with the affected local public body~~]; or

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

6 E. The financial activities of agencies and legally
7 separate entities shall be subject to annual performance
8 audits. Performance audits, as defined in audit rules
9 promulgated by the state auditor, shall be completed by the end
10 of the state's fiscal year. Performance audits shall examine
11 an agency's or legally separate entity's use of resources in
12 order to evaluate whether those resources are being used
13 effectively and efficiently to:

14 (1) ensure adherence to federal and state
15 laws, rules, regulations, policies and procedures;

16 (2) assess accounting and reporting processes
17 of financial transactions, including commitments,
18 authorizations and receipt and disbursement of funds;

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

22 (4) prevent and detect fraud and abuse of
23 state resources and an agency's or legally separate entity's
24 internal accounting controls designed to prevent accounting
25 errors and violations of state and federal law and rules

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1 related to financial matters.

2 [G.] F. In addition to the annual audit, the state
3 auditor may cause the financial affairs and transactions of an
4 agency to be audited in whole or in part.

5 ~~[D. Annual financial and compliance audits of~~
6 ~~agencies under the oversight of the financial control division~~
7 ~~of the department of finance and administration shall be~~
8 ~~completed and submitted by an agency and independent auditor to~~
9 ~~the state auditor no later than sixty days after the state~~
10 ~~auditor receives notification from the financial control~~
11 ~~division to the effect that an agency's books and records are~~
12 ~~ready and available for audit.]~~

13 G. The local government division of the department
14 of finance and administration shall inform the state auditor of
15 the compliance or failure to comply by a local public body with
16 the provisions of Section 6-6-3 NMSA 1978.

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

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

5 ~~[F.]~~ I. The state auditor shall notify the
6 ~~[legislative finance committee and the]~~ public education
7 department if ~~[(1)]~~ a school district, charter school or
8 regional education cooperative has failed to submit a required
9 audit report within ninety days of the due date specified by
10 the state auditor. ~~[and~~

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

17 ~~G.]~~ J. The state auditor shall notify the
18 administrative office of the courts for the judiciary, the New
19 Mexico legislative council for legislative agencies and the
20 legislative finance committee, ~~[and]~~ the secretary of finance
21 and administration and other relevant oversight agencies as
22 determined by the state auditor if ~~[(1) a state agency, state~~
23 ~~institution, municipality or county]~~ any agency has failed to
24 submit a required audit report within ninety days of the due
25 date specified by the state auditor ~~[and~~

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1 ~~(2) the state auditor has investigated the~~
2 ~~matter and attempted to negotiate with the state agency, state~~
3 ~~institution, municipality or county but the state agency, state~~
4 ~~institution, municipality or county has not made satisfactory~~
5 ~~progress toward compliance with the Audit Act]."~~

6 SECTION 3. Section 12-6-4 NMSA 1978 (being Laws 1969,
7 Chapter 68, Section 4, as amended) is amended to read:

8 "12-6-4. AUDITING COSTS.--The reasonable cost of all
9 audits shall be borne by the agency audited, except that:

10 A. a public housing authority other than a regional
11 housing authority shall not bear the cost of an audit conducted
12 solely at the request of its local primary government entity;
13 and

14 B. the administrative office of the courts shall
15 bear the cost ~~[of auditing]~~ for performance audits of the
16 magistrate courts. A metropolitan court shall be treated as a
17 single agency for the purpose of audit and shall be audited as
18 a unit, and the cost of the audit shall be paid from the
19 appropriation to the metropolitan court. The district courts
20 of all counties within a judicial district shall be treated as
21 a single agency for the purpose of audit and shall be audited
22 as a unit, and the cost of the audit shall be paid from the
23 appropriation to each judicial district. The court clerk trust
24 account and the state treasurer account of each county's
25 district court shall be included within the scope of the

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1 judicial district audit."

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

4 "12-6-5. REPORTS OF AUDITS.--

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

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

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

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

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

24 ~~[G.]~~ B. Within thirty days after receipt of the
25 report, the agency audited may notify the state auditor of any

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1 errors in the report. If the state auditor is satisfied from
2 data or documents at hand, or by an additional investigation,
3 that the report is erroneous, the state auditor shall correct
4 the report and ~~[furnish copies of the corrected report to all~~
5 ~~parties receiving the original report]~~ post the corrected
6 report on the state auditor's website."

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

9 "12-6-10. ANNUAL INVENTORY.--

10 A. ~~[The governing authority of each agency shall]~~
11 At the end of each fiscal year, each agency shall conduct a
12 physical inventory of movable chattels and equipment costing an
13 amount as specified in audit rules promulgated by the state
14 auditor that is more than five thousand dollars (\$5,000) and
15 under the control of the governing authority. This inventory
16 shall include all movable chattels and equipment procured
17 through the capital program fund under Section 15-3B-16 NMSA
18 1978, which are assigned to the agency designated by the
19 director of the facilities management division of the general
20 services department as the user agency. The inventory shall
21 list the chattels and equipment and the date and cost of
22 acquisition. No agency shall be required to list any item
23 costing ~~[five thousand dollars (\$5,000) or]~~ less than the
24 amount specified in the audit rules promulgated by the state
25 auditor. Upon completion, the inventory shall be certified by

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1 the governing authority as to correctness. Each agency shall
2 maintain one copy in its files. [~~At the time of the annual~~
3 ~~audit~~] The state auditor, personnel of the state auditor's
4 office or independent auditors approved by the state auditor
5 shall [~~ascertain~~] evaluate the correctness of the inventory [~~by~~
6 ~~generally accepted auditing procedures~~] in the annual financial
7 or performance audit.

8 B. The official or governing authority of each
9 agency is chargeable on the official's or authority's official
10 bond for the chattels and equipment shown in the inventory.

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

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

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

3 "12-6-14. CONTRACT AUDITS.--

4 A. The state auditor shall notify each agency
5 designated for audit by an independent auditor, and the agency
6 shall enter into a contract with an independent auditor of its
7 choice in accordance with procedures prescribed by rules of the
8 state auditor; provided, however, that a state-chartered
9 charter school subject to oversight by the public education
10 department or an agency subject to oversight by the higher
11 education department shall receive approval from its oversight
12 agency prior to submitting a recommendation for an independent
13 auditor of its choice. The state auditor may select the
14 auditor for an agency that has not submitted a recommendation
15 within sixty days of notification by the state auditor to
16 contract for the year being audited, and the agency being
17 audited shall pay the cost of the audit. Each contract for
18 auditing entered into between an agency and an independent
19 auditor shall be approved in writing by the state auditor.

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

23 [~~B.~~] C. The state auditor or personnel of the state
24 auditor's office designated by the state auditor shall examine
25 all audit reports [~~of audits of agencies~~] made pursuant to

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1 contract. Based upon demonstration of work in progress, the
2 state auditor may authorize progress payments to the
3 independent auditor by the agency being audited under contract.
4 Final payment for services rendered by an independent auditor
5 shall not be made until the state auditor makes a determination
6 and written finding that the audit has been made in a competent
7 manner in accordance with the provisions of the contract and
8 applicable rules [~~by the state auditor~~]."

9 SECTION 7. APPLICABILITY.--The provisions of this act
10 apply to audits conducted for fiscal year 2019 and subsequent
11 fiscal years.

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