

The Audit Act

ARTICLE 6

Audit Act

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12-6-1. Short title. (1969)

Statute text

Sections 12-6-1 through 12-6-14 NMSA 1978 may be cited as the "Audit Act."

12-6-2. Definitions. (2009)

Statute text

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

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

12-6-3. Annual and special audits; financial examinations. (Effective July 1, 2012.) (2011)

Statute text

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

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disbursed directly by an administering 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

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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.

12-6-4. Auditing costs. (2007)

Statute text

The reasonable cost of all audits shall be borne by the agency audited, except that:

A. 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

B. the administrative office of the courts shall bear the cost of auditing 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.

12-6-5. Reports of audits. (2009)

Statute text

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

C. 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.

12-6-6. Criminal violations. (2003)

Statute text

Immediately upon discovery of any violation of a criminal statute in connection with

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financial affairs, the state auditor shall report the violation to the proper prosecuting officer and furnish the officer with all data and information in his possession relative to the violation. An agency or independent auditor shall report a violation immediately to the state auditor.

12-6-7. Shortages in accounts; sureties. (1969)

Statute text

- A. The state auditor shall notify the appropriate surety on the official bond whenever an audit discloses a shortage in the accounts of any agency. Failure to notify the surety, however, does not release the surety from any obligation under the bond.
- B. Sureties upon official bonds of agencies are not released from liability on official bonds until the state auditor has certified to them that the accounts of the agency have been examined and found to be correct and a clearance of liability is given them.
- C. When necessary, the state auditor may institute legal proceedings against sureties upon official bonds of officers and employees. In such proceedings, the officer or employee may set up as a defense that errors have been committed by the state auditor in making charges against him, or that he has been refused proper and legal credit by the state auditor, but the burden of proof is upon the officer or employee to show such facts.

12-6-8. Repayment of funds. (1969)

Statute text

If restitution has not been made in thirty days from the receipt by an agency of a report of an audit reflecting a shortage of funds for which the agency is accountable under law, suit to enforce repayment or refund to the agency may be brought by the state auditor.

12-6-9. Public depositories. (1969)

Statute text

The state auditor may:

- A. require depositories of public money to furnish reconciliation sheets for the purpose of checking the deposits of public funds;
- B. inspect the books and records of any depository concerning public funds; and
- C. examine employees of a depository under oath concerning the correctness of the reconciliation or any entry upon the books or records of the depository relating to public funds.

12-6-10. Annual inventory. (2005)

Statute text

- A. The governing authority of each agency shall, at the end of each fiscal year, conduct a physical inventory of movable chattels and equipment costing 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 property control 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. 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 shall satisfy himself as to the correctness of the inventory by generally accepted auditing procedures.

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- B. The official or governing authority of each agency is chargeable on his official 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 maintained by state agencies and local public bodies.
- 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.

12-6-11. Oaths; subpoenas. (1969)

Statute text

- A. Oaths may be administered by the state auditor when necessary for an audit or examination.
- B. When necessary for an audit or examination, the state auditor may apply to the district court of Santa Fe county for issuance of a subpoena to compel the attendance of witnesses and the production of books and records. Process under this section shall be served by any sheriff or deputy or by any member of the New Mexico state police without cost. Witnesses not then employed by an agency who are subpoenaed to appear shall receive the same compensation as that provided for witnesses subpoenaed before the district court, paid by the state auditor.
- C. Any person subpoenaed under this section who fails to appear, refuses to testify or fails to produce the required books or records is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000).

12-6-12. Regulations. (1969)

Statute text

The state auditor shall promulgate reasonable regulations necessary to carry out the duties of his office, including regulations required for conducting audits in accordance with generally accepted auditing standards. The regulations become effective upon filing in accordance with the State Rules Act [14-4-1 NMSA 1978].

12-6-13. Audit fund; payment for audits; expenses of auditor. (1969)

Statute text

- A. There is created in the state treasury the "audit fund" into which the state auditor shall deposit all fees and costs received from agencies audited by him.
- B. Payments for salaries and expenses of the state auditor shall be made from the audit fund, and the fund shall not revert at the end of any fiscal year.

12-6-14. Contract audits. (2011)

Statute text

- 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 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. Payment of public funds

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

B. The state auditor or personnel of the state auditor's office designated by the state auditor shall examine all 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 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.