

ARTICLE 6

Audit Act

12-6-1. Short title.

Sections 12-6-1 through 12-6-14 [12-6-15] NMSA 1978 may be cited as the "Audit Act."

History: 1953 Comp., § 4-31-1, enacted by Laws 1969, ch. 68, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. **Laws 2019, ch. 3, § 1** enacted a new section of the Audit Act that was compiled as **12-6-15** NMSA 1978, effective June 14, 2019.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d States § 65.

81A C.J.S. States §§ 134, 229.

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) 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.

History: 1953 Comp., § 4-31-2, enacted by Laws 1969, ch. 68, § 2; **2003, ch. 273, § 17**; **2009, ch. 283, § 2**.

ANNOTATIONS

The 2009 amendment, effective July 1, 2010, in Paragraph (4) of Subsection A, changed the reference from Subsection A through C to Paragraphs (1) through (3) of Subsection A; and added Subsection B.

The 2003 amendment, effective July 1, 2003, designated the text of the former section as Subsections A, B and D; inserted "or metropolitan" following "district courts, magistrate" in Subsection A; deleted "but not limited to" following "source derived, including" in Subsection B; and added Subsection C.

Water and sanitation districts created pursuant to the Water and Sanitation District Act, [73-21-1 NMSA 1978 et seq.](#), acequias and community ditch associations subject to Section [73-2-1 NMSA 1978, et seq.](#), and associations created pursuant to the Sanitary Projects Act, [3-29-1 NMSA 1978, et seq.](#), are entities subject to audit under the Audit Act. 1990 Op. Att'y Gen. [90-30](#).

New Mexico municipal self-insurers' fund. — The New Mexico municipal self insurers' fund, formed under the provisions of Section [11-1-3 NMSA 1978](#), authorizing governing bodies to exercise joint powers, and Article 62, Chapter 3 NMSA 1978, governing municipal insurance, is an "agency," as defined in this section and is, therefore, subject to audit by the state auditor under Section [12-6-3 NMSA 1978](#). 1987 Op. Att'y Gen. No. [87-65](#).

A conservancy district is an agency subject to audit by the state auditor. 1989 Op. Att'y Gen. No. [89-07](#).

The New Mexico Military Institute Foundation, Inc., is not an "agency" and, therefore, is not subject to audit by the state auditor. 1988 Op. Att'y Gen. No. [88-79](#).

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 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 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) 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 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.

History: 1953 Comp., § 4-31-3, enacted by Laws 1969, ch. 68, § 3; 2003, ch. 273, § 18; 2007, ch. 240, § 1; 2009, ch. 273, § 1; 2009, ch. 283, § 3; 2011, ch. 106, § 6.

ANNOTATIONS

Compiler's notes. — During calendar years 1992 and 1993 the District Court for the First Judicial District entered three orders in *Vigil v. King*, SF 92-1487(C), prescribing the procedure to be followed for selecting independent auditors for state agencies and local public bodies. In summary, the court orders provided:

If a state agency or local public body is notified that it has been designated for audit to be conducted by an independent auditor, the state agency or local public body shall select and submit the name of an independent auditor to the state auditor. The state auditor may, within five days after receipt of the state agency's or local public body's selection, disapprove of the choice of the agency or local public body. A disapproval must be in writing and set forth the reason(s) for disapproval. A disapproval is subject to judicial review;

If the state auditor finds that a state agency or local public body audit is not being conducted in accordance with generally accepted auditing standards or pursuant to the auditing contract between the parties, the state auditor may either complete the audit or contract with another independent auditor to complete the audit. If the state auditor contracts with another independent auditor, the contract amount is limited to the remaining amount owed on the original auditor contract;

The state auditor, pursuant to the Procurement Code, may, under conditions specified in the order, contract

with independent auditors to assist the state auditor in conducting any special audit pursuant to [12-6-3 NMSA 1978](#). The state agency being audited is not a party to this contract. The total cost of the contract entered into by the state auditor cannot exceed 25% of the contract amount provided in the agreement between the state auditor and the agency to be audited.

The 2011 amendment, effective July 1, 2012, required the state auditor to notify the legislative finance committee and the public education department if a school or educational cooperative has not made satisfactory progress to comply with the Audit Act and to notify the legislative finance committee and the secretary of finance and administration if a state agency, state institution, municipality or county has not timely submitted an audit report and has not made satisfactory progress to comply with the Audit Act.

The 2009 amendment, effective July 1, 2010, in Subsection A, at the beginning of the sentence, added "Except as otherwise provided in Subsection B of this section"; added Subsection B; and in Subsection D, added the last sentence.

Temporary provisions. — [Laws 2009, ch. 283, § 4](#) provided that compliance of a local public body not in compliance with the Audit Act between January 1, 2007 and June 30, 2010 is waived for those years if the local public body complies with the applicable provisions of that act in effect on or after July 1, 2010, unless the local public body is required to receive a full financial and compliance audit pursuant to the provisions of that act in effect on or after July 1, 2010.

The 2007 amendment, effective June 15, 2007, added Subsection D.

The 2003 amendment, effective July 1, 2003, in Subsection A, inserted the second sentence and inserted "and rules issued by the state auditor" at the end; and added Subsection C.

No waiver of immunity under Tort Claims Act. — Because state auditor was acting within his scope of duty in commissioning a special audit and publishing the report, no waiver of immunity exists under the Tort Claims Act for claims of defamation. *Vigil v. State Auditor's Office*, [2005-NMCA-096](#), 138 N.M. 63, [116 P.3d 854](#), cert. denied, 2005-NMCERT-007, 138 N.M. 952, [117 P.3d 952](#).

Purely statutory duties of auditor may be transferred. — New Mexico Const., art. V, § 1, in designating the executive offices of state government, among which is the office of state auditor, is silent as to the duties appertaining to the office of state auditor. This being so, the legislature had power to transfer purely statutory duties of the office previously performed by the auditor to another officer of its own choosing. *Torres v. Grant*, [1957-NMSC-061](#), 63 N.M. 106, [314 P.2d 712](#).

State auditor may accept federal audit at his option. — The state auditor is fully authorized by Subsection A of this section to accept the annual federal audit of employment security commission (now employment security division) funds as an approved independent audit. He is not, however, required to do so and may authorize an audit by personnel designated by him. 1970 Op. Att'y Gen. No. [70-33](#).

Section prevails over limitation on divulging information. — The legislature manifests a clear intent in this section that the state auditor have available to him all documents necessary to perform a thorough audit of every governmental entity in accordance with generally accepted auditing standards. The policy is expressed strongly enough so that this section must prevail over [3-38-8 NMSA 1978](#) (relating to divulging information) (repealed in 1981) to the extent of any repugnancy between the two provisions; therefore the state auditor is authorized to examine tax documents generated pursuant to [3-38-1](#) to [3-38-12 NMSA 1978](#) (now [3-38-1](#) to [3-38-6 NMSA 1978](#)) insofar as such examination is required by generally accepted auditing standards. 1978 Op. Att'y Gen. No. [78-22](#).

Designation of agency to choose its own auditor. — The decision whether the state auditor's office will

perform the audit or whether the agency may contract out rests within the state auditor's discretion. Once he has given his written approval to the agency's contract with an independent auditor and said contract has been enacted, however, he may not thereafter revoke the designation. 1987 Op. Att'y Gen. No. [87-54](#).

Auditor's revocation of designation of independent auditor. — If the state auditor revokes his designation of an agency to choose its own auditor, he may conduct the audit himself, through personnel of his office, or with the assistance of independent auditors under contract with his office. 1987 Op. Att'y Gen. No. [87-54](#).

Auditor's refusal of approval of independent auditor. — The state auditor may refuse to approve the choice of independent auditor by an agency for any of the reasons provided in SA Rule 87-2 (now [2.2.2.8](#) NMAC). He is limited to those reasons, because he has, by adopting that rule, committed himself to comply with it until it is changed; however, he is not required to disclose which reason or reasons formed the basis for his decision. 1987 Op. Att'y Gen. No. [87-54](#).

Directing agency to choose its own auditor. — In carrying out the requirement set forth in the Audit Act ([12-6-1](#) to [12-6-14](#) NMSA 1978) to audit the financial affairs of each state agency on a yearly basis, the procedures employed by the State Auditor in creating a pool of independent auditors and then directing agencies to contract with auditors he designated from the pool violated the requirements of the Procurement Code ([13-1-23](#) et seq. NMSA 1978). 1992 Op. Att'y Gen. No. [92-06](#) (but see compiler's notes) (decided under former law).

New Mexico municipal self-insurers' fund. — The New Mexico municipal self insurers' fund, formed under the provisions of Section [11-1-3](#) NMSA 1978, authorizing governing bodies to exercise joint powers, and Article 62, Chapter 3 NMSA 1978, governing municipal insurance, is an "agency," as defined in this section and is, therefore, subject to audit by the state auditor under this section. 1987 Op. Att'y Gen. No. [87-65](#).

The New Mexico Military Institute Foundation, Inc., is not an "agency" and, therefore, is not subject to audit by the state auditor. 1988 Op. Att'y Gen. No. [88-79](#).

Sanitary Projects Act associations. — Associations created pursuant to the Sanitary Projects Act ([3-29-1](#) NMSA 1978 et seq.) are subject to audit under this article. 1990 Op. Att'y Gen. No. [90-30](#).

Water and sanitation districts created by the Water and Sanitation District Act ([73-21-1](#) NMSA 1978 et seq.) are subject to audit under this article. 1990 Op. Att'y Gen. No. [90-30](#).

Acequias under Sections [73-2-1](#) to [73-2-64](#) NMSA 1978 are subject to audit under this article. 1990 Op. Att'y Gen. No. [90-30](#).

State auditor and conservation district supervisors have statutory duty to audit district. — Both the state auditor and the soil and water conservation district supervisors have an express statutory duty to have district financial affairs audited: the primary responsibility for having the audits performed should be borne by the district supervisors, but the ultimate responsibility lies with the state auditor, who is responsible for ensuring that every agency's financial records are examined and audited. 1980 Op. Att'y Gen. No. [80-19](#).

Soil and Water Conservation Act creates exception to annual audit. — The apparent conflict between the annual auditing requirement in the Audit Act and the five-year audit exception in the Soil and Water Conservation District Act is easily resolved by applying the well-settled rule of statutory construction that, where there is no clear intention to the contrary, specific statutes prevail over general statutes, regardless of when enacted; consequently, the auditing requirements of the Soil and Water Conservation District Act, Section [73-20-41C\(2\)](#) NMSA 1978 (now [73-20-41F\(2\)](#)), apply since it is the more specific statute. 1980 Op.

12-6-4. Auditing costs.

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.

History: 1953 Comp., § 4-31-4, enacted by Laws 1969, ch. 68, § 4; 2001, ch. 142, § 1; 2007, ch. 240, § 2.

ANNOTATIONS

Compiler's notes. — During calendar years 1992 and 1993 the District Court for the First Judicial District entered three orders in *Vigil v. King*, SF 92-1487(C), prescribing the procedure to be followed for selecting independent auditors for state agencies and local public bodies. In summary, the court orders provide:

If a state agency or local public body is notified that it has been designated for audit to be conducted by an independent auditor, the state agency or local public body shall select and submit the name of an independent auditor to the state auditor. The state auditor may, within five days after receipt of the state agency's or local public body's selection, disapprove of the choice of the agency or local public body. A disapproval must be in writing and set forth the reason(s) for disapproval. A disapproval is subject to judicial review;

If the state auditor finds that a state agency or local public body audit is not being conducted in accordance with generally accepted auditing standards or pursuant to the auditing contract between the parties, the state auditor may either complete the audit or contract with another independent auditor to complete the audit. If the state auditor contracts with another independent auditor, the contract amount is limited to the remaining amount owed on the original auditor contract;

The state auditor, pursuant to the Procurement Code, may, under conditions specified in the order, contract with independent auditors to assist the state auditor in conducting any special audit pursuant to 12-6-3 NMSA 1978. The state agency being audited is not a party to this contract. The total cost of the contract entered into by the state auditor cannot exceed 25% of the contract amount provided in the agreement between the state auditor and the agency to be audited.

The 2007 amendment, effective June 15, 2007, added Subsection A.

The 2001 amendment, effective July 1, 2001, deleted "and the cost of the annual audit of the state treasury shall be borne by special appropriations to the state board of finance" at the end of the first sentence, and

inserted the second sentence concerning the audits of metropolitan courts.

The state auditor's practice of assigning contract auditor's to assist the state auditor in conducting agency audits illegally circumvents the legislature's decision to place the selection of such contract auditors and contract negotiations with the agencies themselves. 1992 Op. Att'y Gen. No. [92-06](#).

12-6-5. Reports of audits.

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.

History: 1953 Comp., § 4-31-5, enacted by Laws 1969, ch. 68, § 5; 1977, ch. 247, § 33; 1983, ch. 26, § 4; [2009, ch. 140, § 1](#).

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, deleted "as defined in Section [6-1-12](#) NMSA 1978"; deleted "the legislative accounting review committee and to"; after "audited or examined", changed "ten" to "five"; and after "five days later", added "or earlier if the agency waives the five-day period"; and in Subsection B, deleted "as defined in Section [6-1-12](#) NMSA 1978" and "office of the state cash manager", and added "department of finance and administration".

No waiver of immunity under Tort Claims Act. — Because state auditor was acting within his scope of duty in commissioning a special audit and publishing the report, no waiver of immunity exists under the Tort Claims Act for claims of defamation. *Vigil v. State Auditor's Office*, [2005-NMCA-096](#), 138 N.M. 63, [116 P.3d 854](#), cert. denied, 2005-NMCERT-007, 138 N.M. 952, 117 P.3d 952.

12-6-6. Criminal violations.

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

History: 1953 Comp., § 4-31-6, enacted by Laws 1969, ch. 68, § 6; 2003, ch. 273, § 19.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, substituted "An agency or independent auditor shall report a violation immediately" for "Any independent auditor shall report a violation" near the end.

12-6-7. Shortages in accounts; sureties.

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.

History: 1953 Comp., § 4-31-7, enacted by Laws 1969, ch. 68, § 7.

12-6-8. Repayment of funds.

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.

History: 1953 Comp., § 4-31-8, enacted by Laws 1969, ch. 68, § 8.

12-6-9. Public depositories.

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.

History: 1953 Comp., § 4-31-9, enacted by Laws 1969, ch. 68, § 9.

12-6-10. Annual inventory.

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 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. 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 ascertain the correctness of the inventory by generally accepted auditing procedures.

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

History: 1953 Comp., § 4-31-10, enacted by Laws 1969, ch. 68, § 10; 1979, ch. 195, § 1; 1983, ch. 303, § 1; 1984, ch. 53, § 1; 1985, ch. 115, § 1; 1987, ch. 35, § 1; 1999, ch. 230, § 1; 2005, ch. 237, § 1; 2013, ch. 115, § 9.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; in Subsection A, in the second sentence, and in Subsection B, deleted "property control" and added "facilities management" before the word "division"; and in Subsection A, in the sixth sentence, after "state auditor shall", deleted "satisfy himself as to" and added "ascertain".

The 2005 amendment, effective June 17, 2005, increased the value of state property that must be inventoried and listed from \$1,000 to \$5,000.

The 1999 amendment, effective June 18, 1999, in Subsection A, substituted "one thousand dollars (\$1,000)" for "five hundred dollars (\$500)" in the first and fourth sentences.

The 1987 amendment, effective June 19, 1987, substituted "five hundred dollars" for "two hundred and fifty dollars" in the first and fourth sentences of Subsection A.

12-6-11. Oaths; subpoenas.

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).

History: 1953 Comp., § 4-31-11, enacted by Laws 1969, ch. 68, § 11.

12-6-12. Regulations.

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 [Chapter 14, Article 4 NMSA 1978].

History: 1953 Comp., § 4-31-12, enacted by Laws 1969, ch. 68, § 12.

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

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.

History: 1953 Comp., § 4-31-13, enacted by Laws 1969, ch. 68, § 13.

ANNOTATIONS

Audit fund was not intended for deposit and appropriation of federal funds. 1980 Op. Att'y Gen. No. 80-40.

Provision of General Appropriation Act of 1980 ineffective in controlling federal funds. — Insofar as the language in the General Appropriation Act of 1980, Laws 1980, ch. 155, attempted to control the expenditure of federal funds received by the state auditor, it can be of no effect. 1980 Op. Att'y Gen. No. 80-40.

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 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 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.

History: 1953 Comp., § 4-31-14, enacted by Laws 1969, ch. 68, § 14; 2003, ch. 273, § 20; 2011, ch. 87, § 1.

ANNOTATIONS

Compiler's notes. — During calendar years 1992 and 1993 the District Court for the First Judicial District entered three orders in *Vigil v. King*, SF 92-1487(C), prescribing the procedure to be followed for selecting independent auditors for state agencies and local public bodies. In summary, the court orders provide:

If a state agency or local public body is notified that it has been designated for audit to be conducted by an independent auditor, the state agency or local public body shall select and submit the name of an independent auditor to the state auditor. The state auditor may, within five days after receipt of the state agency's or local public body's selection, disapprove of the choice of the agency or local public body. A disapproval must be in writing and set forth the reason(s) for disapproval. A disapproval is subject to judicial review;

If the state auditor finds that a state agency or local public body audit is not being conducted in accordance with generally accepted auditing standards or pursuant to the auditing contract between the parties, the state auditor may either complete the audit or contract with another independent auditor to complete the

audit. If the state auditor contracts with another independent auditor, the contract amount is limited to the remaining amount owed on the original auditor contract;

The state auditor, pursuant to the Procurement Code, may, under conditions specified in the order, contract with independent auditors to assist the state auditor in conducting any special audit pursuant to [12-6-3 NMSA 1978](#). The state agency being audited is not a party to this contract. The total cost of the contract entered into by the state auditor cannot exceed 25% of the contract amount provided in the agreement between the state auditor and the agency to be audited.

The 2011 amendment, effective June 17, 2011, required charter schools that are subject to oversight by the public education department to obtain approval from the department before the school submits a recommendation for an independent auditor to the state auditor.

The 2003 amendment, effective July 1, 2003, redesignated former Subsections B and D as present Subsections A and B (the former section had no Subsection A or C); in Subsection A, inserted "provided, however, that an agency subject to oversight by the state department of public education or the commission on higher education shall receive approval from its oversight agency prior to submitting a recommendation for an independent auditor of its choice" in the first sentence and added the second sentence.

Use of contract auditors for agency audits. — The state auditor does not have the authority to contract with independent auditors to assist him in doing agency audits. The state auditor may designate an agency for audit by an independent auditor, but the designated agency is then authorized to contract with an independent auditor of its choice. Accordingly, the state auditor's practice of assigning contract auditors "to assist" him in conducting agency audits illegally circumvented the legislature's decision to place the selection of such contract auditors and the contract negotiations with the agencies themselves. 1992 Op. Att'y Gen. No. [92-06](#) (but see compiler's notes) (decided under prior law).

Selection of independent auditor. — It is a violation of the Procurement Code ([13-1-23 NMSA 1978 et seq.](#) [now [13-1-28 NMSA 1978 et seq.](#)]) for the state auditor to direct an agency to enter into a contract with an independent auditor selected by him and paid for by the agency. 1992 Op. Att'y Gen. No. [92-06](#) (but see compiler's notes) (decided under prior law).

12-6-15. Annual financial audit report; state board of finance review.

Within six months after the report is due to the state auditor, each of the educational retirement board, the office of the state treasurer, the public employees retirement association and the state investment council shall present the agency's current annual financial audit report to the state board of finance for review.

History: [Laws 2019, ch. 3, § 1](#).

ANNOTATIONS

Effective dates. — [Laws 2019, ch. 3, § 1](#), contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 14, 2019, 90 days after the adjournment of the legislature.