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HOUSE BILL 228

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Luciano "Lucky" Varela

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO PUBLIC MONEY; REQUIRING NOTIFICATIONS TO THE SECRETARY OF FINANCE AND ADMINISTRATION OF THE FAILURE TO TIMELY SUBMIT CERTAIN AUDITS OR CERTAIN FINANCIAL REPORTS; PROVIDING FOR PECUNIARY SANCTIONS AGAINST STATE AGENCIES FOR FAILING TO TIMELY SUBMIT AUDITS; PROVIDING FOR PECUNIARY SANCTIONS AGAINST MUNICIPALITIES AND COUNTIES FOR FAILING TO TIMELY SUBMIT AUDITS OR FINANCIAL REPORTS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2009.

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

Section 1. Section 6-3-6 NMSA 1978 (being Laws 1957, Chapter 253, Section 7, as amended) is amended to read:

"6-3-6. STATE BUDGET DIVISION--PERIODIC ALLOTMENTS.--

A. The state budget division, subject to the approval of the secretary of finance and administration, is

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1 authorized to provide [~~regulations~~] rules for the periodic
2 allotment of funds that may be expended by any state agency.

3 B. The expenditures of any state agency as defined
4 in Section [~~11-4-1.1 NMSA 1953~~] 6-3-1 NMSA 1978, for the first
5 [~~six-months~~] six-month period of each odd-numbered fiscal year
6 shall be limited to one-half of the appropriation or approved
7 budget, whichever is less, for that fiscal year. This
8 restriction [~~shall~~] does not apply to those agencies whose
9 operations are more efficiently measured by periods other than
10 a fiscal year, including but not limited to the New Mexico
11 legislative council, legislative committees, the inter-tribal
12 Indian ceremonial and the New Mexico state fair. Expenditures
13 of the intertribal Indian ceremonial office and the New Mexico
14 state fair shall be governed by regulation of the department of
15 finance and administration. The department of finance and
16 administration may also allow expenditure of more than one-half
17 of the appropriation or approved budget for those agencies
18 planning major expenditures for capital outlay in the first six
19 months of the fiscal year, which would result in over-
20 expenditure of the first six-months' allocation.

21 C. Upon the direction of the secretary of finance
22 and administration pursuant to Section 9-6-5.2 NMSA 1978, the
23 state budget division shall temporarily withhold an allotment
24 to a state agency that has failed to submit an audit report
25 required by the Audit Act. The amount withheld and the number

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1 of periodic allotments subject to the withholding shall be as
2 directed by the secretary."

3 Section 2. Section 6-6-2 NMSA 1978 (being Laws 1957,
4 Chapter 250, Section 2, as amended) is amended to read:

5 "6-6-2. LOCAL GOVERNMENT DIVISION--POWERS AND DUTIES.--
6 The local government division of the department of finance and
7 administration has the power and duty in relation to local
8 public bodies to:

9 A. require each local public body to furnish and
10 file with the division, on or before June 1 of each year, a
11 proposed budget for the next fiscal year;

12 B. examine each proposed budget and, on or before
13 July 1 of each year, approve and certify to each local public
14 body an operating budget for use pending approval of a final
15 budget;

16 C. hold public hearings on proposed budgets;

17 D. make corrections, revisions and amendments to
18 the proposed budgets as may be necessary to meet the
19 requirements of law;

20 E. certify a final budget for each local public
21 body to the appropriate governing body prior to the first
22 Monday in September of each year. The budgets, when approved,
23 are binding upon all tax officials of the state;

24 F. require periodic financial reports, at least
25 quarterly, of local public bodies. The reports shall contain

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1 the pertinent details regarding applications for federal money
2 or federal grants-in-aid or regarding federal money or federal
3 grants-in-aid received, including details of programs, matching
4 funds, personnel requirements, salary provisions and program
5 numbers, as indicated in the catalog of federal domestic
6 assistance, of the federal funds applied for and of those
7 received;

8 G. notify the secretary of finance and
9 administration if a municipality or county has failed to submit
10 two consecutive financial reports required by Subsection F of
11 this section;

12 [~~G.~~] H. upon the approval of the secretary of
13 finance and administration, authorize the transfer of funds
14 from one budget item to another when the transfer is requested
15 and a need exists meriting the transfer and the transfer is not
16 prohibited by law. In case of a need necessitating the
17 expenditure for an item not provided for in the budget, upon
18 approval of the secretary of finance and administration, the
19 budget may be revised to authorize the expenditures;

20 [~~H.~~] I. with written approval of the secretary of
21 finance and administration, increase the total budget of any
22 local public body in the event the local public body undertakes
23 an activity, service, project or construction program that was
24 not contemplated at the time the final budget was adopted and
25 approved and which activity, service, project or construction

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1 program will produce sufficient revenue to cover the increase
2 in the budget or the local public body has surplus funds on
3 hand not necessary to meet the expenditures provided for in the
4 budget with which to cover the increase in the budget;
5 provided, however, that the attorney general shall review legal
6 questions identified by the secretary arising in connection
7 with such budget increase requests;

8 [~~F.~~] J. supervise the disbursement of funds to the
9 end that expenditures will not be made in excess of budgeted
10 items or for items not budgeted and that there will not be
11 illegal expenditures;

12 [~~J.~~] K. prescribe the form for all budgets, books,
13 records and accounts for local public bodies; and

14 [~~K.~~] L. with the approval of the secretary of
15 finance and administration, make rules relating to budgets,
16 records, reports, handling and disbursement of public funds or
17 in any manner relating to the financial affairs of the local
18 public bodies."

19 Section 3. Section 7-1-6.15 NMSA 1978 (being Laws 1983,
20 Chapter 211, Section 20, as amended) is amended to read:

21 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO
22 MUNICIPALITIES OR COUNTIES.--

23 A. The provisions of this section apply to:

24 (1) any distribution to a municipality of
25 gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978 or
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1 of interstate telecommunications gross receipts tax pursuant to
2 Section 7-1-6.36 NMSA 1978;

3 (2) any transfer to a municipality with
4 respect to any local option gross receipts tax imposed by that
5 municipality;

6 (3) any transfer to a county with respect to
7 any local option gross receipts tax imposed by that county;

8 (4) any distribution to a county pursuant to
9 Section 7-1-6.16 NMSA 1978;

10 (5) any distribution to a municipality or a
11 county of gasoline taxes pursuant to Section 7-1-6.9 NMSA 1978;

12 (6) any transfer to a county with respect to
13 any tax imposed in accordance with the Local Liquor Excise Tax
14 Act;

15 (7) any distribution to a municipality or a
16 county of cigarette taxes pursuant to Sections 7-1-6.11,
17 7-12-15 and 7-12-16 NMSA 1978;

18 (8) any distribution to a county from the
19 county government road fund pursuant to Section 7-1-6.26 NMSA
20 1978;

21 (9) any distribution to a municipality of
22 gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978; and

23 (10) any distribution to a municipality of
24 compensating taxes pursuant to Section 7-1-6.55 NMSA 1978.

25 B. If the secretary determines that any prior

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1 distribution or transfer to a political subdivision was
2 erroneous, the secretary shall increase or decrease the next
3 distribution or transfer amount for that political subdivision
4 after the determination, except as provided in Subsection C, D
5 or E of this section, by the amount necessary to correct the
6 error. Subject to the provisions of Subsection E of this
7 section, the secretary shall notify the political subdivision
8 of the amount of each increase or decrease.

9 C. No decrease shall be made to current or future
10 distributions or transfers to a political subdivision for any
11 excess distribution or transfer made to that political
12 subdivision more than one year prior to the calendar year in
13 which the determination of the secretary was made.

14 D. The secretary, in lieu of recovery from the next
15 distribution or transfer amount, may recover an excess
16 distribution or transfer of one hundred dollars (\$100) or more
17 to the political subdivision in installments from current and
18 future distributions or transfers to that political subdivision
19 pursuant to an agreement with the officials of the political
20 subdivision whenever the amount of the distribution or transfer
21 decrease for the political subdivision exceeds ten percent of
22 the average distribution or transfer amount for that political
23 subdivision for the twelve months preceding the month in which
24 the secretary's determination is made; provided that for the
25 purposes of this subsection, the "average distribution or

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1 transfer amount" shall be the arithmetic mean of the
2 distribution or transfer amounts within the twelve months
3 immediately preceding the month in which the determination is
4 made.

5 E. Except for the provisions of this section, if
6 the amount by which a distribution or transfer would be
7 adjusted pursuant to Subsection B of this section is one
8 hundred dollars (\$100) or less, no adjustment or notice need be
9 made.

10 F. The secretary is authorized to decrease a
11 distribution to a municipality or county upon being directed to
12 do so by the secretary of finance and administration pursuant
13 to the State Aid Intercept Act or to redirect a distribution to
14 the New Mexico finance authority pursuant to an ordinance or a
15 resolution passed by the county or municipality and a written
16 agreement of the municipality or county and the New Mexico
17 finance authority. Upon direction to decrease a distribution
18 or notice to redirect a distribution to a municipality or
19 county, the secretary shall decrease or redirect the next
20 designated distribution, and succeeding distributions as
21 necessary, by the amount of the state distributions intercept
22 authorized by the secretary of finance and administration
23 pursuant to the State Aid Intercept Act or by the amount of the
24 state distribution intercept authorized pursuant to an
25 ordinance or a resolution passed by the county or municipality

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1 and a written agreement with the New Mexico finance authority.
2 The secretary shall transfer the state distributions intercept
3 amount to the municipal or county treasurer or other person
4 designated by the secretary of finance and administration or to
5 the New Mexico finance authority pursuant to written agreement
6 to pay the debt service to avoid default on qualified local
7 revenue bonds or meet other local revenue bond, loan or other
8 debt obligations of the municipality or county to the New
9 Mexico finance authority.

10 G. Upon the direction of the secretary of finance
11 and administration pursuant to Section 9-6-5.2 NMSA 1978, the
12 secretary shall temporarily withhold a distribution to a
13 municipality or county that has failed to submit an audit
14 report required by the Audit Act or a financial report required
15 by Subsection F of Section 6-6-2 NMSA 1978. The amount to be
16 withheld, the source of the withheld distribution and the
17 number of months that the distribution is to be withheld shall
18 be as directed by the secretary of finance and administration.
19 A distribution withheld pursuant to this subsection shall
20 remain in the tax administration suspense fund until
21 distributed to the municipality or county and shall not be
22 distributed to the general fund."

23 Section 4. Section 9-6-1 NMSA 1978 (being Laws 1977,
24 Chapter 247, Section 1) is amended to read:

25 "9-6-1. SHORT TITLE.--Sections [~~1 through 7 of this act~~]

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1 9-6-1 through 9-6-5.1 and 9-6-15 NMSA 1978 may be cited as the
2 "Department of Finance and Administration Act".

3 Section 5. A new section of the Department of Finance and
4 Administration Act, Section 9-6-5.2 NMSA 1978, is enacted to
5 read:

6 "9-6-5.2. [NEW MATERIAL] FAILURE TO TIMELY SUBMIT AUDIT
7 REPORTS OR FINANCIAL REPORTS--ENFORCEMENT POWERS OF
8 SECRETARY.--

9 A. Upon notification by the state auditor pursuant
10 to Subsection G of Section 12-6-3 NMSA 1978 that a state
11 agency, municipality or county has failed to submit an audit
12 report as required by the Audit Act, the secretary of finance
13 and administration shall order the agency, municipality or
14 county to submit monthly financial reports to the department of
15 finance and administration until all past-due audit reports
16 have been submitted to the state auditor and the secretary is
17 satisfied that the agency, municipality or county is in
18 compliance with all financial and audit requirements.

19 B. If, ninety days after an order has been issued
20 pursuant to Subsection A of this section to a state agency
21 subject to periodic allotments, the agency has not submitted
22 all past-due reports or has not otherwise made progress,
23 satisfactory to the state auditor, toward compliance with the
24 Audit Act, the secretary may direct the state budget division
25 to temporarily withhold periodic allotments to the agency

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1 pursuant to Section 6-3-6 NMSA 1978. The amounts withheld and
2 the period of time for which the allotments are to be withheld
3 shall be determined by the secretary subject to the following
4 guidelines:

5 (1) the initial amount withheld shall not
6 exceed five percent of the allotment and shall be for a period
7 of no more than three months;

8 (2) every three months, the secretary shall
9 determine if the agency has submitted all past-due audit
10 reports or has otherwise made progress, satisfactory to the
11 state auditor, toward compliance with the Audit Act. If the
12 secretary determines that past-due reports have not been
13 submitted and that there has been inadequate progress, the
14 secretary may direct that the amount being currently withheld
15 be increased by an additional amount, up to another five
16 percent of the allotment, for an additional period of up to
17 three months; and

18 (3) upon a determination that all past-due
19 audit reports have been submitted or that the agency is
20 otherwise making progress, satisfactory to the state auditor,
21 toward compliance with the Audit Act, the secretary shall
22 direct that all withheld amounts be distributed to the agency
23 and that future allotments shall be made in full.

24 C. If, ninety days after an order has been issued
25 pursuant to Subsection A of this section to a municipality or

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1 county, the municipality or county has not submitted all past-
2 due reports or has not otherwise made progress, satisfactory to
3 the state auditor, toward compliance with the Audit Act, the
4 secretary may direct the secretary of taxation and revenue to
5 temporarily withhold distributions to the municipality or
6 county pursuant to Section 7-1-6.15 NMSA 1978. The amounts
7 withheld, the source of the amounts and the period of time for
8 which the distributions are to be withheld shall be determined
9 by the secretary of finance and administration subject to the
10 following guidelines:

11 (1) transfers to a county or municipality of
12 receipts from any local option gross receipts tax or from a tax
13 imposed pursuant to the Local Liquor Excise Tax Act shall not
14 be withheld;

15 (2) the source and amount of a withheld
16 distribution shall be determined in a manner that will not:

17 (a) impair any outstanding bonds or
18 other obligations of the municipality or county; or

19 (b) interrupt a redirected distribution
20 to the New Mexico finance authority pursuant to an ordinance or
21 a resolution passed by the county or municipality and a written
22 agreement of the municipality or county and the New Mexico
23 finance authority;

24 (3) the initial amount withheld shall not
25 exceed five percent of the amount that would otherwise be

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1 distributed to the municipality or county pursuant to the Tax
2 Administration Act and shall be for a period of no more than
3 three months;

4 (4) every three months, the secretary of
5 finance and administration shall determine if the municipality
6 or county has submitted all past-due audit reports or has
7 otherwise made progress, satisfactory to the state auditor,
8 toward compliance with the Audit Act. If the secretary
9 determines that past-due reports have not been submitted and
10 that there has been inadequate progress, the secretary may
11 direct that the amount being currently withheld be increased by
12 an additional amount, up to another five percent of the amount
13 that would otherwise be distributed, for an additional period
14 of up to three months; and

15 (5) upon a determination that all past-due
16 audit reports have been submitted or that the municipality or
17 county is otherwise making progress, satisfactory to the state
18 auditor, toward compliance with the Audit Act, the secretary
19 shall direct that all withheld amounts be distributed to the
20 municipality or county and that future distributions shall be
21 made in full.

22 D. After receiving notice from the local government
23 division of the department of finance and administration
24 required by Subsection G of Section 6-6-2 NMSA 1978 that a
25 municipality or county has failed to submit two consecutive

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1 financial reports pursuant to Subsection F of that section, the
2 secretary may direct the secretary of taxation and revenue to
3 temporarily withhold distributions to the municipality or
4 county pursuant to Section 7-1-6.15 NMSA 1978. The amounts
5 withheld, the source of the amounts and the period of time for
6 which the distributions are to be withheld shall be determined
7 by the secretary of finance and administration subject to the
8 following guidelines:

9 (1) transfers to a county or municipality of
10 receipts from any local option gross receipts tax or from a tax
11 imposed pursuant to the Local Liquor Excise Tax Act shall not
12 be withheld;

13 (2) the source and amount of a withheld
14 distribution shall be determined in a manner that will not:

15 (a) impair any outstanding bonds or
16 other obligations of the municipality or county; or

17 (b) interrupt a redirected distribution
18 to the New Mexico finance authority pursuant to an ordinance or
19 a resolution passed by the county or municipality and a written
20 agreement of the municipality or county and the New Mexico
21 finance authority;

22 (3) the initial amount withheld shall not
23 exceed five percent of the amount that would otherwise be
24 distributed to the municipality or county pursuant to the Tax
25 Administration Act and shall be for a period of no more than

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1 three months;

2 (4) every three months, the secretary of
3 finance and administration shall determine if the municipality
4 or county has submitted all past-due financial reports or has
5 otherwise made progress, satisfactory to the local government
6 division, toward compliance with the law. If the secretary
7 determines that past-due reports have not been submitted and
8 that there has been inadequate progress, the secretary may
9 direct that the amount being currently withheld be increased by
10 an additional amount, up to another five percent of the amount
11 that would otherwise be distributed, for an additional period
12 of up to three months; and

13 (5) upon a determination that all past-due
14 financial reports have been submitted or that the municipality
15 or county is otherwise making progress, satisfactory to the
16 local government division, toward compliance with the law, the
17 secretary shall direct that all withheld amounts be distributed
18 to the municipality or county and that future distributions
19 shall be made in full."

20 Section 6. Section 12-6-3 NMSA 1978 (being Laws 1969,
21 Chapter 68, Section 3, as amended by Laws 2009, Chapter 273,
22 Section 1 and by Laws 2009, Chapter 283, Section 3) is amended
23 to read:

24 "12-6-3. ANNUAL AND SPECIAL AUDITS--FINANCIAL
25 EXAMINATIONS.--

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1 A. Except as otherwise provided in Subsection B of
2 this section, the financial affairs of every agency shall be
3 thoroughly examined and audited each year by the state auditor,
4 personnel of the state auditor's office designated by the state
5 auditor or independent auditors approved by the state auditor.
6 The comprehensive annual financial report for the state shall
7 be thoroughly examined and audited each year by the state
8 auditor, personnel of the state auditor's office designated by
9 the state auditor or independent auditors approved by the state
10 auditor. The audits shall be conducted in accordance with
11 generally accepted auditing standards and rules issued by the
12 state auditor.

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

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

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1 submitting and filing quarterly reports and final budgets for
2 approval to the local government division of the department of
3 finance and administration and from any financial reporting to
4 the state auditor;

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

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

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

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

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

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

25 (a) narrowly tailored to the affected

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1 local public body;

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

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

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

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

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

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

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

25 (a) economically feasible for the

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1 affected local public body; and

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

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

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

10 D. Annual financial and compliance audits of
11 agencies under the oversight of the financial control division
12 of the department of finance and administration shall be
13 completed and submitted by an agency and independent auditor to
14 the state auditor no later than sixty days after the state
15 auditor receives notification from the financial control
16 division to the effect that an agency's books and records are
17 ready and available for audit. The local government division
18 of the department of finance and administration shall inform
19 the state auditor of the compliance or failure to comply by a
20 local public body with the provisions of Section 6-6-3 NMSA
21 1978.

22 E. In order to comply with United States department
23 of housing and urban development requirements, the financial
24 affairs of a public housing authority that is determined to be
25 a component unit in accordance with generally accepted

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1 accounting principles, other than a housing department of a
2 local government or a regional housing authority, at the public
3 housing authority's discretion, may be audited separately from
4 the audit of its local primary government entity. If a
5 separate audit is made, the public housing authority audit
6 shall be included in the local primary government entity audit
7 and need not be conducted by the same auditor who audits the
8 financial affairs of the local primary government entity.

9 ~~[E-]~~ F. The state auditor shall notify the
10 legislative finance committee and the public education
11 department ~~[within ten days when]~~ if:

12 (1) a school district, charter school or
13 regional education cooperative ~~[fails]~~ has failed to submit a
14 required audit report within ninety days of the due date
15 specified by the state auditor; and

16 (2) the state auditor has investigated the
17 matter and attempted to negotiate with the school district,
18 charter school or regional education cooperative but the school
19 district, charter school or regional education cooperative has
20 not made satisfactory progress toward compliance with the Audit
21 Act.

22 G. The state auditor shall notify the legislative
23 finance committee and the secretary of finance and
24 administration if:

25 (1) a state agency, municipality or county has

1 failed to submit a required audit report within ninety days of
2 the due date specified by the state auditor; and

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

8 Section 7. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2011.

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