

AMENDED IN ASSEMBLY APRIL 13, 2011

AMENDED IN ASSEMBLY MARCH 30, 2011

AMENDED IN ASSEMBLY MARCH 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 229

Introduced by Assembly Member Lara

February 2, 2011

An act to amend Section 12410.5 of, to add Sections 12410.6, 12410.7, and 12410.9 to, and to add and repeal Section 12410.8 of, the Government Code, relating to audits.

LEGISLATIVE COUNSEL'S DIGEST

AB 229, as amended, Lara. Controller: audits.

Existing law requires the Controller to superintend the fiscal concerns of the state. Existing law requires the Controller to receive every audit report prepared by any local agency to comply with the federal Single Audit Act of 1984.

This bill would require the audit reports prepared in this regard to be submitted to the Controller within 9 months of the end of the period audited or in accordance with applicable federal law. This bill would authorize the Controller to appoint a qualified certified public accountant to complete an audit report if it is not submitted by the local agency within the required timeframe, with associated costs to be borne by the local agency, as specified. This bill would require the audit to comply with the Government Auditing Standards issued by the Comptroller General of the United States. This bill would require the audits to be made by a certified public accountant that is licensed by the California Board of Accountancy and selected by a local agency from a directory

of accountants to be published by the Controller by December 31 of each year. The Controller would be required to use specified criteria to determine those certified public accountants that are to be included in the directory.

This bill would require the Controller to develop a plan to review and report the financial and compliance audits of local agencies, and to review and monitor the audit reports performed by independent auditors, according to specified criteria. This bill would require the Controller, in consultation with specified entities, to propose and adopt the content of an audit guide. This bill would also require the Controller to report to the Legislature by January 31 of each year the results of the Controller’s oversight activity. The requirement that the Controller report to the Legislature would be repealed on December 31, 2015.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds that financial audits provide
2 an independent assessment of, and reasonable assurance about,
3 whether local agencies’ reported financial condition, results, and
4 use of resources are presented fairly in accordance with recognized
5 standards. Accordingly, it is the intent of the Legislature to promote
6 accountability over local government funding by establishing a
7 process for reviewing and reporting on financial and compliance
8 audits conducted of local agencies. It is further the intent of the
9 Legislature that the Controller shall have oversight responsibilities
10 for implementing and ensuring compliance with this act.

11 SEC. 2. Section 12410.5 of the Government Code is amended
12 to read:

13 12410.5. (a) The Controller shall receive every annual financial
14 audit report prepared for any local agency, as defined in Section
15 53890, including those reports prepared in compliance with the
16 federal Single Audit Act of 1984 (P.L. 98-502; 31 U.S.C. Sec.
17 7501 et seq.) and required under any law to be submitted to any
18 state agency, and shall, after ascertaining its compliance with that
19 federal act, transmit the report to the designated state agency.

20 (b) An audit for any local agency submitted to the Controller
21 pursuant to this section shall comply with the Government Auditing
22 Standards issued by the Comptroller General of the United States.

1 (c) An audit for any local agency submitted to the Controller
2 pursuant to this section shall be made by a certified public
3 accountant, licensed by the California Board of Accountancy, and
4 selected by the local agency, as applicable, from a directory of
5 certified public accountants ~~deemed~~ *maintained* by the Controller
6 ~~as qualified to conduct audits of local agencies~~ which shall be
7 published by the Controller not later than December 31 of each
8 year.

9 (1) In determining which certified public accountants shall be
10 included in the directory, the Controller shall use the following
11 criteria:

12 (A) The certified public accountants or public accountants shall
13 be in good standing as certified by the California Board of
14 Accountancy.

15 (B) The certified public accountants or public accountants, as
16 a result of a quality control review conducted by the Controller
17 pursuant to Section 12410.9, shall not have been found to have
18 conducted an audit in a manner constituting noncompliance with
19 subdivision (b) of this section and subdivision (a) of Section
20 ~~12410.7. The Controller shall establish an appeals process for~~
21 ~~certified public accountants or public accountants who are removed~~
22 ~~from the directory but not referred to the California Board of~~
23 ~~Accountancy pursuant to subdivision (b) of Section 12410.7 or~~
24 ~~subdivision (d) of Section 12410.9. 12410.7, and the Controller~~
25 ~~referred the matter to the California Board of Accountancy for~~
26 ~~consideration of disciplinary action pursuant to subdivision (d)~~
27 ~~of Section 12410.9. In that instance, if the certified public~~
28 ~~accountant or public accountant had been included in the directory,~~
29 ~~the certified public accountant's or public accountant shall be~~
30 ~~removed from the directory until such time as the board makes a~~
31 ~~determination on the matter. If the board suspends, or revokes,~~
32 ~~the certified public accountant or public accountant's license, or~~
33 ~~prohibits the licensee from performing audits of local agencies,~~
34 ~~the certified public accountant or public accountant shall be~~
35 ~~excluded from the directory until such time as he or she is in good~~
36 ~~standing with the board.~~

37 (2) Commencing with the 2011–12 fiscal year, it shall be
38 unlawful for a public accounting firm to provide audit services to
39 a local agency if the lead audit partner, or coordinating audit
40 partner, having primary responsibility for the audit, or the audit

1 partner responsible for reviewing the audit, has performed audit
2 services for that local agency in each of the six previous fiscal
3 years. The Controller may waive this requirement if he or she finds
4 that no otherwise eligible auditor is available to perform the audit.

5 (d) The governing board of each local agency shall include all
6 of the following in its contracts for audits:

7 (1) A provision to withhold 10 percent of the audit fee until the
8 Controller certifies that the audit report conforms to the reporting
9 provisions of subdivision (a) of Section 12410.7.

10 (2) A provision to withhold 50 percent of the audit fee for any
11 subsequent year of a multiyear contract if the prior year's audit
12 report was not certified as conforming to the reporting provisions
13 of subdivision (a) of Section 12410.7. This provision shall include
14 a statement that a multiyear contract shall be null and void if a
15 public accounting firm or independent auditor is declared ineligible
16 pursuant to subdivision (d) of Section 12410.9. The amount
17 withheld shall not be payable unless payment is ordered by the
18 board or the audit report for that subsequent year is certified by
19 the Controller as conforming to the reporting provisions of
20 subdivision (a) of Section 12410.7.

21 (3) A provision that will provide the Controller access to audit
22 working papers.

23 SEC. 3. Section 12410.6 is added to the Government Code, to
24 read:

25 12410.6. (a) The Controller shall develop a plan to review and
26 report on financial and compliance audits of local agencies. The
27 Controller, in consultation with the Department of Finance, and
28 representatives of the League of California Cities, the California
29 State Association of County Auditors, and the California Society
30 of Certified Public Accountants, shall propose the content of, and
31 adopt, an audit guide.

32 (b) The audit reports shall be submitted to the Controller within
33 nine months after the end of the period audited, or in accordance
34 with applicable federal law.

35 (c) If the audit reports required by Section 12410.5 have not
36 been submitted by a local agency to the Controller on or before
37 the due date established by this section, the Controller may appoint
38 a qualified certified public accountant to complete the report and
39 to obtain the information required. Any cost incurred by the
40 Controller pursuant to this subdivision, including contracts with,

1 or the employment of, the certified public accountants in
2 completing the audit shall be borne by the local agency and shall
3 be a charge against any unencumbered funds of the local agency.

4 SEC. 4. Section 12410.7 is added to the Government Code, to
5 read:

6 12410.7. (a) The Controller on an annual basis shall review
7 and monitor the audit reports performed by independent auditors.
8 The Controller shall determine whether the audit reports conform
9 with the reporting provisions of government auditing standards
10 and the audit guide and shall notify each local agency, and the
11 auditor of each local agency regarding each determination.

12 (b) The independent auditor shall correct his or her audit report
13 within 30 days of notification of any deficiency. The Controller
14 may suspend the independent auditor from performing any local
15 agency audits if the auditor does not correct his or her audit report
16 within 30 days of the Controller's notification.

17 (c) (1) Within 30 days from the date of receipt of written
18 notification that the Controller refuses to certify an audit report as
19 conforming to the reporting provisions described in subdivision
20 (a), an independent auditor or audit firm having a portion of an
21 audit fee withheld pursuant to paragraph (1) or (2) of subdivision
22 (d) of Section 12410.5 may file an appeal in writing with the
23 California Board of Accountancy.

24 (2) The board shall complete an investigation of the appeal
25 within 90 days of the filing of the appeal and, on the basis of the
26 investigation, do one of the following:

27 (A) (i) Order the Controller to provide notification that the audit
28 report conforms to the reporting provisions described in subdivision
29 (a).

30 (ii) If the board orders the Controller to provide notification that
31 the audit report conforms to the reporting provisions described in
32 subdivision (a), the Controller shall notify the contracting local
33 agency, which shall then release the portion of the audit fee being
34 withheld in accordance with paragraph (1) or (2) of subdivision
35 (d) of Section 12410.5.

36 (B) Schedule the appeal for a hearing, in which case the final
37 action on the appeal shall be completed by the board within one
38 year from the date of the filing of the appeal.

39 SEC. 5. Section 12410.8 is added to the Government Code, to
40 read:

1 12410.8. (a) The Controller shall report to the Legislature by
 2 January 31 of each year the results of the Controller’s oversight
 3 activity, including the results of the Controller’s quality control
 4 reviews.

5 (b) A report submitted pursuant to subdivision (a) shall be
 6 submitted in compliance with Section 9795.

7 (c) Pursuant to Section 10231.5, this section is repealed on
 8 December 31, 2015.

9 SEC. 6. Section 12410.9 is added to the Government Code, to
 10 read:

11 12410.9. (a) The Controller may perform quality control
 12 reviews of audit working papers to determine whether audits are
 13 performed in conformity with government audit standards and the
 14 local agency audit guide. The Controller shall communicate the
 15 results of his or her reviews to the Department of Finance, the
 16 independent auditor, and the local agency for which the audit was
 17 performed, and shall review his or her findings with the
 18 independent auditor.

19 (b) Prior to the performance of any quality control reviews, the
 20 Controller shall develop and publish guidelines and standards for
 21 those reviews. Pursuant to the development of those guidelines
 22 and standards for those reviews, the Controller shall provide an
 23 opportunity for public comment. The Controller shall update the
 24 guidelines and standards for any changes in audit standards.

25 (c) The Controller is responsible for selecting audits for review
 26 based on criteria, including, but not limited to, disciplinary actions
 27 by the California Board of Accountancy, results of the Controller’s
 28 review and monitoring of the audit reports, the extent of findings
 29 in the audit reports issued by the independent auditor, the number
 30 of audits of local agencies performed annually by the independent
 31 auditor, the independent auditor’s experience in performing audits
 32 of local agencies, the complexity of state and federal programs
 33 administered by the local agencies, and requests or leads from
 34 other sources.

35 (d) ~~If the quality control review of the Controller indicates finds~~
 36 ~~that the audit was conducted in a manner that may constitute~~
 37 ~~constitutes~~ unprofessional conduct as defined pursuant to Section
 38 5100 of the Business and Professions Code, ~~or repeated failure~~
 39 ~~that there were multiple and repeated failures~~ to disclose
 40 noncompliant acts, the Controller shall refer the case to the

1 California Board of Accountancy. *In that instance, the independent*
2 *auditor shall be prohibited from performing an audit until such*
3 *time as the board resolves the matter.* If the California Board of
4 Accountancy finds that the independent auditor conducted an audit
5 in an unprofessional manner, the Controller may prohibit the
6 independent auditor from performing any audit of a local agency
7 ~~for a period of three years for the period during which the~~
8 ~~independent auditor is not in good standing with the board,~~ in
9 addition to any other penalties that the California Board of
10 Accountancy may impose. ~~In any matter that is referred to the~~
11 ~~California Board of Accountancy, the Controller may suspend the~~
12 ~~independent auditor from performing any local agency audit~~
13 ~~pending final disposition of the matter by notice and an opportunity~~
14 ~~to respond to that suspension. The independent auditor shall be~~
15 ~~given credit for any period of suspension if the California Board~~
16 ~~of Accountancy prohibits the independent auditor from performing~~
17 ~~audits of local agencies. In any event, the Controller shall not~~
18 ~~suspend an independent auditor under this subdivision for a period~~
19 ~~of more than three years.~~

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