

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

772C0307

SENATE BILL NO. 182

Introduced by: Senators Symens, Dunn (Rebecca), Duxbury, Hutmacher, and Olson and
Representatives Haley, Diedrich (Larry), and McNenny

1 FOR AN ACT ENTITLED, An Act to clarify certain duties and authority pertaining to the
2 auditor-general and the Department of Legislative Audit.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 4-2-2 be amended to read as follows:

5 4-2-2. The powers and duties of the Department of Legislative Audit shall be executed and
6 performed by and under the direction of an auditor-general who shall be an experienced public
7 accountant, and who shall be appointed to the office of auditor-general by a ~~concurrent~~ joint
8 resolution of the two houses of the ~~state~~ Legislature. The term of office of the auditor-general
9 shall be eight years and until the appointment and qualification of ~~his~~ a successor. ~~Should~~ If the
10 office ~~be~~ becomes vacant when the Legislature is not in session, the Executive Board of the
11 Legislative Research Council shall appoint an auditor-general to serve until the next legislative
12 session and the appointment and qualification of ~~his~~ a successor.

13 Section 2. That § 4-2-8 be amended to read as follows:

14 4-2-8. The Executive Board of the ~~state~~ Legislative Research Council ~~is hereby empowered~~
15 ~~to~~ shall act on behalf of the Legislature in directing the activities of the auditor-general. The
16 auditor-general is directly responsible to the Executive Board of the Legislative Research

1 Council whenever the Legislature is not in session.

2 Section 3. That § 4-11-2 be amended to read as follows:

3 4-11-2. The Department of Legislative Audit shall perform financial and compliance audits
4 in accordance with generally accepted government auditing standards, approved by the Executive
5 Board of the Legislative Research Council, of all ~~state officers~~, constitutional offices and all state
6 departments, agencies, boards, and commissions, including all penal, charitable, and educational
7 institutions, and all regulatory boards and commissions ~~receiving~~ any of which receive funds by
8 appropriation or whose expenditure of funds is pursuant to law. Such audit shall be made at least
9 once every two years and without notice to the ~~office, department, board, agency, commission~~
10 ~~or institution~~ entity to be audited. Any regulatory board or commission whose average annual
11 expenditures for the last three years did not exceed fifty thousand dollars may file an annual
12 report with the Department of Legislative Audit in lieu of an audit. The Department of
13 Legislative Audit shall prescribe the format of the annual report to be filed.

14 Section 4. That § 4-11-3 be amended to read as follows:

15 4-11-3. A special audit, investigation, or examination of any of such matters specified in
16 § 4-11-2 or of any additional matter relating to state affairs, directly or indirectly, shall also be
17 made at any time upon written order of the Governor, approved by the Executive Board of the
18 Legislative Research Council, and a report shall likewise be made of such special audit,
19 investigation, or examination and filed with the Governor, the Legislative Research Council, and
20 secretary of state ~~and be subject to public inspection~~. Any report so filed may be inspected by
21 the public in the Office of Secretary of State.

22 Section 5. That § 4-11-4 be amended to read as follows:

23 4-11-4. The auditor-general shall cause audits ~~as follows~~ in accordance with generally
24 accepted government auditing standards, approved by the Executive Board of the Legislative
25 Research Council, of the following:

- 1 (1) Financial and compliance audits ~~in accordance with generally accepted government~~
2 ~~auditing standards~~ of each municipality and county in the state, shall be made at least
3 once every two years;
- 4 (2) Municipalities with less than six hundred thousand dollars in annual revenue that are
5 required to have an audit pursuant to federal regulations shall be audited in
6 accordance with federal guidelines;
- 7 (3) Municipalities with less than six hundred thousand dollars in annual revenue that are
8 not required to have an audit pursuant to federal regulations may submit an annual
9 report in lieu of a formal audit. Municipalities may subtract the annual revenue
10 received from any municipal enterprise or utility system except utility systems defined
11 in § 9-40-1 from total annual revenue, if the municipal enterprise or utility is audited
12 separately. This report shall be submitted to the auditor-general on forms prescribed
13 by the Department of Legislative Audit.

14 The auditor-general may audit the books and records of any office or officer of any political
15 subdivision if it is requested by the governing body or if the auditor-general finds that special
16 reasons exist.

17 Section 6. That § 4-11-8 be amended to read as follows:

18 4-11-8. No examination or audit of the books and accounts of a public corporation ~~shall~~ may
19 extend back more than six years from the date such examination is commenced, unless by request
20 of the governing body thereof or upon petition of not less than ten percent of the taxpayers
21 thereof as shown by the last assessment roll, or in case of the state upon order of the Governor,
22 approved by the Executive Board of the Legislative Research Council.

23 Section 7. That § 4-11-9 be amended to read as follows:

24 4-11-9. The auditor-general shall make detailed reports of the result of any audits or
25 investigations made by the Department of Legislative Audit within sixty days after such audits

1 or investigations have been completed. The auditor-general shall file reports of state agencies
2 with the Executive Board of the Legislative Research Council, the Governor, and the respective
3 state agency. The auditor-general shall file reports of political subdivisions with the Executive
4 Board of the Legislative Research Council, the respective governing board, and finance director.

5 Section 8. That § 4-11-11 be amended to read as follows:

6 4-11-11. The auditor-general shall at all times keep on file in ~~his~~ the office of the Department
7 of Legislative Audit the original copy and such additional copies as may be deemed necessary
8 of any report of investigations, audits, or examinations made by ~~his~~ the department or any private
9 audit under the provisions of this chapter. All of the reports shall at all times be open to public
10 inspection ten days after date of filing ~~in~~ with the Executive Board of the Legislative Research
11 Council or the Governor, Attorney General, secretary of state or any of the public offices
12 specified pursuant to the provisions of this chapter.

13 Section 9. That § 4-11-14 be amended to read as follows:

14 4-11-14. If any report ~~provided herein~~ compiled pursuant to the provisions of this chapter
15 discloses malfeasance, misfeasance, or neglect of duty on the part of ~~an~~ any public employee or
16 officer, upon receipt of a copy of such report ~~it shall be the duty of,~~ the proper legal officer, ~~and~~
17 ~~he is authorized and required to~~ shall institute in the proper court, within sixty days from ~~the~~
18 receipt thereof, a civil action on behalf of the state or taxing district to which the right of action
19 has accrued and promptly prosecute the same to final determination to recover any fees or public
20 funds misappropriated, or to otherwise determine the rights of the parties in the premises. If the
21 political subdivision has no legal officer assigned to it, it shall employ one at its expense, to act
22 under the supervision of the attorney general. If the proper legal officer does not institute a civil
23 action within sixty days, the officer shall file a report with the Department of Legislative Audit
24 and the Executive Board of the Legislative Research Council stating the officer's reasons for not
25 instituting such civil action.

1 Section 10. That § 4-11-15 be amended to read as follows:

2 4-11-15. The Department of Legislative Audit, the Executive Board of the Legislative
3 Research Council, and the attorney general shall be notified at the beginning of any action, and
4 kept fully advised of the progress thereof, ~~and it shall not be lawful for any.~~ No board of county
5 commissioners or board of other taxing district ~~to~~ may make a settlement or compromise of any
6 claim exceeding the sum of three hundred dollars, or of any civil action or controversy arising
7 out of such malfeasance, misfeasance or neglect of duty so reported, nor ~~for~~ may any court ~~to~~
8 enter any compromise or settlement of such civil action, without giving notice thereof to the
9 attorney general ~~and allowing him~~ who shall be allowed to be heard in the matter.

10 Section 11. That § 4-11-16 be amended to read as follows:

11 4-11-16. ~~It shall be the duty of~~ The Executive Board of the Legislative Research Council,
12 the Governor, ~~and of the attorney general to see~~ shall provide that the provisions of §§ 4-11-14
13 and 4-11-15 are faithfully complied with and upon refusal or neglect of the proper legal officer
14 to institute a civil action ~~as herein provided,~~ the attorney general ~~shall have the power to~~ may
15 institute and prosecute such action to final determination at the expense of the subdivision or
16 agency involved. Nothing contained in §§ 4-11-14 to 4-11-16, inclusive, ~~shall in any manner bar,~~
17 ~~bars or prejudice~~ prejudices any criminal ~~actions~~ action or ~~prosecutions~~ prosecution which may
18 be applicable.

19 Section 12. That § 4-11-17 be amended to read as follows:

20 4-11-17. ~~It shall be the duty of the~~ The attorney general, ~~when~~ if called upon by the
21 auditor-general, ~~to~~ shall aid in any investigation or matter needing legal advice or inquiry, ~~and~~
22 ~~to.~~ The attorney general shall supervise the prosecution of all offenders under the laws relating
23 thereto.

24 Section 13. That § 4-11-21 be amended to read as follows:

25 4-11-21. The identity of a person supplying information to the Department of Legislative

1 Audit in conjunction with the performance of any audit authorized by this chapter may be kept
2 confidential if requested by that person and such confidentiality is determined by the auditor-
3 general, pursuant to policies approved by the Executive Board of the Legislative Research
4 Council, to be appropriate under the circumstances. After a determination of confidentiality has
5 been made, the identity of the person supplying the information may not be disclosed except
6 pursuant to written consent of that person or by court order. No person may use a subpoena,
7 discovery, or other applicable statute to obtain the identity of the person. This section does not
8 apply to requests from the attorney general or any law enforcement ~~officers~~ officer of any
9 municipality, county, state, or federal agency or department for ~~such~~ information reasonably
10 necessary for any criminal investigation or prosecution.