

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

772C0307

SENATE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **SB182** - 2/2/99

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~~ his 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~~ his 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 § 4-11-4 be amended to read as follows:

15 4-11-4. The auditor-general shall cause audits ~~as follows~~ in accordance with generally
16 accepted government auditing standards, approved by the Executive Board of the Legislative
17 Research Council, of the following:

18 (1) Financial and compliance audits ~~in accordance with generally accepted government~~
19 ~~auditing standards~~ of each municipality and county in the state, shall be made at least
20 once every two years;

21 (2) Municipalities with less than six hundred thousand dollars in annual revenue that are
22 required to have an audit pursuant to federal regulations shall be audited in
23 accordance with federal guidelines;

24 (3) Municipalities with less than six hundred thousand dollars in annual revenue that are
25 not required to have an audit pursuant to federal regulations may submit an annual

1 report in lieu of a formal audit. Municipalities may subtract the annual revenue
2 received from any municipal enterprise or utility system except utility systems defined
3 in § 9-40-1 from total annual revenue, if the municipal enterprise or utility is audited
4 separately. This report shall be submitted to the auditor-general on forms prescribed
5 by the Department of Legislative Audit.

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

9 Section 5. That § 4-11-9 be amended to read as follows:

10 4-11-9. The auditor-general shall make detailed reports of the result of any audits or
11 investigations made by the Department of Legislative Audit within sixty days after such audits
12 or investigations have been completed. The auditor-general shall file reports of state agencies
13 with the Executive Board of the Legislative Research Council, the Governor, and the respective
14 state agency. The auditor-general shall file reports of political subdivisions with the Executive
15 Board of the Legislative Research Council, the respective governing board, and finance director.

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

17 4-11-11. The auditor-general shall at all times keep on file in ~~his~~ the office of the Department
18 of Legislative Audit the original copy and such additional copies as may be deemed necessary
19 of any report of investigations, audits, or examinations made by ~~his~~ the department or any private
20 audit under the provisions of this chapter. All of the reports shall at all times be open to public
21 inspection ten days after date of filing ~~in~~ with the Executive Board of the Legislative Research
22 Council or the Governor, Attorney General, secretary of state or any of the public offices
23 specified pursuant to the provisions of this chapter.

24 Section 7. That § 4-11-14 be amended to read as follows:

25 4-11-14. If any report ~~provided herein~~ compiled pursuant to the provisions of this chapter

1 discloses malfeasance, misfeasance, or neglect of duty on the part of ~~an~~ any public employee or
2 officer, upon receipt of a copy of such report ~~it shall be the duty of,~~ the proper legal officer, ~~and~~
3 ~~he is authorized and required to~~ shall institute in the proper court, within sixty days from ~~the~~
4 receipt thereof, a civil action on behalf of the state or taxing district to which the right of action
5 has accrued and promptly prosecute the same to final determination to recover any fees or public
6 funds misappropriated, or to otherwise determine the rights of the parties in the premises. If the
7 political subdivision has no legal officer assigned to it, it shall employ one at its expense, to act
8 under the supervision of the attorney general. If the proper legal officer does not institute a civil
9 action within sixty days, the officer shall file a report with the Department of Legislative Audit
10 and the Executive Board of the Legislative Research Council stating the officer's reasons for not
11 instituting such civil action.

12 Section 8. That § 4-11-15 be amended to read as follows:

13 4-11-15. The Department of Legislative Audit, the Executive Board of the Legislative
14 Research Council, and the attorney general shall be notified at the beginning of any action, and
15 kept fully advised of the progress thereof, ~~and it shall not be lawful for any.~~ No board of county
16 commissioners or board of other taxing district ~~to~~ may make a settlement or compromise of any
17 claim exceeding the sum of three hundred dollars, or of any civil action or controversy arising
18 out of such malfeasance, misfeasance or neglect of duty so reported, nor ~~for~~ may any court ~~to~~
19 enter any compromise or settlement of such civil action, without giving notice thereof to the
20 attorney general ~~and allowing him~~ who shall be allowed to be heard in the matter.

21 Section 9. That § 4-11-16 be amended to read as follows:

22 4-11-16. ~~It shall be the duty of~~ The Executive Board of the Legislative Research Council,
23 the Governor, ~~and of the attorney general to see~~ shall provide that the provisions of §§ 4-11-14
24 and 4-11-15 are faithfully complied with and upon refusal or neglect of the proper legal officer
25 to institute a civil action ~~as herein provided,~~ the attorney general ~~shall have the power to~~ may

1 institute and prosecute such action to final determination at the expense of the subdivision or
2 agency involved. Nothing contained in §§ 4-11-14 to 4-11-16, inclusive, ~~shall~~ in any manner ~~bar,~~
3 ~~bars~~ or ~~prejudice~~ ~~prejudices~~ any criminal ~~actions~~ action or ~~prosecutions~~ prosecution which may
4 be applicable.

5 Section 10. That § 4-11-17 be amended to read as follows:

6 4-11-17. ~~It shall be the duty of the~~ The attorney general, ~~when~~ if called upon by the
7 auditor-general, ~~to~~ shall aid in any investigation or matter needing legal advice or inquiry, ~~and~~
8 ~~to.~~ The attorney general shall supervise the prosecution of all offenders under the laws relating
9 thereto.

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

11 4-11-21. The identity of a person supplying information to the Department of Legislative
12 Audit in conjunction with the performance of any audit authorized by this chapter may be kept
13 confidential if requested by that person and such confidentiality is determined by the auditor-
14 general, pursuant to policies approved by the Executive Board of the Legislative Research
15 Council, to be appropriate under the circumstances. After a determination of confidentiality has
16 been made, the identity of the person supplying the information may not be disclosed except
17 pursuant to written consent of that person or by court order. No person may use a subpoena,
18 discovery, or other applicable statute to obtain the identity of the person. This section does not
19 apply to requests from the attorney general or any law enforcement ~~officers~~ officer of any
20 municipality, county, state, or federal agency or department for ~~such~~ information reasonably
21 necessary for any criminal investigation or prosecution.

1 **BILL HISTORY**

2 1/27/99 First read in Senate and referred to State Affairs. S.J. 217

3 2/1/99 Scheduled for Committee hearing on this date.

4 2/1/99 State Affairs Do Pass Amended, Passed, AYES 8, NAYS 1. S.J. 270