

LEGISLATIVE BILL 509

Approved by the Governor June 6, 1995

Introduced by Hall, 7; Withem, 14

AN ACT relating to audits; to amend sections 84-304, 84-304.01, 84-304.03, and 84-712.05, Reissue Revised Statutes of Nebraska; to change provisions relating to audit requirements; to eliminate provisions relating to audits of the Legislature; to harmonize provisions; to repeal the original sections; to outright repeal section 50-401.04, Reissue Revised Statutes of Nebraska; and to declare an emergency.
Be it enacted by the people of the State of Nebraska,

Section 1. Section 84-304, Reissue Revised Statutes of Nebraska, is amended to read:

84-304. ~~(1)~~ It shall be the duty of the Auditor of Public Accounts:

(1) ~~(a)~~ To give information in writing to the Legislature, whenever required, upon any subject relating to the fiscal affairs of the state or with regard to any duty of his or her office;

(2) ~~(b)~~ To furnish offices for himself or herself and all fuel, lights, books, blanks, forms, paper, and stationery required for the proper discharge of the duties of his or her office;

(3)(a) ~~(e)(i)~~ To examine or cause to be examined, at such time as he or she shall determine, books, accounts, vouchers, records, and expenditures of all state officers, state bureaus, state boards, state commissioners, the state library, societies and associations supported by the state, state institutions, state colleges, and the University of Nebraska, except when required to be performed by other officers or persons, ~~(ii)~~ (b) to examine or cause to be examined, at the expense of the political subdivision, when the Auditor of Public Accounts determines such examination necessary or when requested by the political subdivision, the books, accounts, vouchers, records, and expenditures of an agricultural association formed under Chapter 2, article 20, county agricultural society, joint airport authority formed under Chapter 3, article 7, city or county airport authority, development district, regional council, drainage district, fire protection district, health district, historical society, hospital authority or district, county hospital, housing authority, irrigation district, regional, county, or municipal library, community mental health center, railroad transportation safety district, rural water district, township, or the Wyuka Cemetery, and ~~(iii)~~ (c) to report promptly to the Director of Administrative Services and the appropriate standing committee of the Legislature the fiscal condition shown by such examinations, including any irregularities or misconduct of officers or employees, any misappropriation or misuse of public funds or property, and any improper system or method of bookkeeping or condition of accounts. An examination of any volunteer department as defined in section 35-901 shall not include an examination of the volunteer department trust fund. The Auditor of Public Accounts shall appoint two assistant deputies (i) ~~(A)~~ whose entire time shall be devoted to the service of the state as directed by the auditor, (ii) ~~(B)~~ who shall be certified public accountants with at least five years' experience, (iii) ~~(C)~~ who shall be selected without regard to party affiliation or to place of residence at the time of appointment, (iv) ~~(D)~~ who shall promptly report in duplicate to the auditor the fiscal condition shown by each examination, including any irregularities or misconduct of officers or employees, any misappropriation or misuse of public funds or property, and any improper system or method of bookkeeping or condition of accounts, and it shall be the duty of the auditor to file promptly with the Governor a duplicate of such report, and (v) ~~(E)~~ who shall qualify by taking an oath which shall be filed in the office of the Secretary of State; and

(4) ~~(F)~~ Conduct audits and related activities for state agencies, political subdivisions of this state, or grantees of federal funds disbursed by a receiving agency on a contractual or other basis for reimbursement to assure proper accounting by all such agencies, political subdivisions, and grantees for funds appropriated by the Legislature and federal funds disbursed by any receiving agency. The Auditor of Public Accounts may contract with any political subdivision to perform the audit of such political subdivision required by or provided for in section 23-1608 or 79-2210.04 or this section and charge the political subdivision for conducting the audit. The fees charged by the auditor for conducting audits on a contractual basis shall be in an amount sufficient to pay the cost of the audit. The fees remitted to the auditor for such audits and services shall be deposited in the Auditor of

Public Accounts Cash Fund.

All the audits and examinations conducted by the Auditor of Public Accounts shall be conducted in a timely manner and in accordance with the standards for audits of governmental organizations, programs, activities, and functions published by the Comptroller General of the United States.

(2) Nothing in this section shall be construed to authorize or require the Auditor of Public Accounts to perform any auditing functions relating to the Legislature, the Legislative Council, the Executive Board of the Legislative Council, or any member of the Legislature.

Sec. 2. Section 84-304.01, Reissue Revised Statutes of Nebraska, is amended to read:

84-304.01. It shall be the duty of the Auditor of Public Accounts to establish, by rule and regulation, minimum standards applicable to all audit, financial, or accounting reports or copies of such reports required to be filed with the Auditor of Public Accounts by any political subdivision of the State of Nebraska. Such minimum standards shall be in accordance with sound accounting principles, in conformity with generally accepted auditing standards and government auditing standards, and designed to bring about uniformity in the content and form of such reports within the same type of political subdivision. Audit reports of any political subdivision required to file such reports with the Auditor of Public Accounts shall be conducted in accordance prepared in conformity with generally accepted auditing standards and government auditing standards.

In connection with his or her duties, but at his or her discretion, the Auditor of Public Accounts may conduct performance audits of all political subdivisions receiving more than twenty-five thousand dollars in the audit year in tax funds from the state including all public utilities and all counties, townships, municipalities, cities, villages, districts, authorities, and other public corporations and entities. The performance audits shall be conducted in conformity with generally accepted auditing standards and government auditing standards.

Sec. 3. Section 84-304.03, Reissue Revised Statutes of Nebraska, is amended to read:

84-304.03. (1) The Auditor of Public Accounts shall establish minimum standards for all persons identified as auditors or who conduct audits of any agency of state government or of any political subdivision, except a village. Such standards shall be established to achieve the goal of assuring a proper level of competency in auditing and shall be distributed to all agencies of state government and all political subdivisions, except villages. No agency of state government or political subdivision, except a village, shall employ any person as an auditor who fails to meet such minimum standards.

(2) For purposes of this section, agency of state government shall not include the Legislature, the Legislative Council, the Executive Board of the Legislative Council, or any member of the Legislature.

Sec. 4. The Auditor of Public Accounts shall have access to all records of any public entity, in whatever form or mode the records may be, unless the auditor's access to the records is specifically prohibited or limited by federal or state law. No provisions of state law shall be construed to change the nonpublic nature of the data obtained as a result of the access. When an audit or investigative finding emanates from nonpublic data which is nonpublic pursuant to federal or state law, all the nonpublic information shall not be made public.

Sec. 5. (1) All final audit reports issued by the Auditor of Public Accounts shall be maintained permanently as a public record in the office of the Auditor of Public Accounts. Working papers and other audit files maintained by the Auditor of Public Accounts are not public records and are exempt from sections 84-712 to 84-712.05. The information contained in working papers and audit files prepared pursuant to a specific audit is not subject to disclosure except to a county attorney or the Attorney General in connection with an investigation made or action taken in the course of the attorney's official duties. Public entities being audited and the federal agencies that have made grants to public entities being audited shall also have access to the relevant working papers and audit files. For purposes of this subsection, working papers means those documents containing evidence to support the auditor's findings, opinions, conclusions, and judgments and includes the collection of evidence prepared or obtained by the auditor during the audit. The Auditor of Public Accounts may make the working papers available for purposes of an external quality control review as required by generally accepted government auditing standards. However, any reports made from such external quality control review shall not make public any information which would be considered confidential under this section when in

the possession of the Auditor of Public Accounts.

(2) If the Auditor of Public Accounts or any employee of the Auditor of Public Accounts knowingly divulges or makes known in any manner not permitted by law any record, document, or information, the disclosure of which is restricted by law, he or she is subject to the same penalties provided in section 84-712.09.

Sec. 6. Section 84-712.05, Reissue Revised Statutes of Nebraska, is amended to read:

84-712.05. The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

(1) Personal information in records regarding a student, prospective student, or former student of any tax-supported educational institution maintaining such records, other than routine directory information;

(2) Medical records, other than records of births and deaths and except as provided in subdivision (5) of this section, in any form concerning any person, and also records of elections filed under section 44-2821;

(3) Trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose;

(4) Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503;

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training, except that this subdivision shall not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person;

(6) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;

(7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information;

(8) Information solely pertaining to protection of the physical security of public property such as guard schedules or lock combinations;

(9) With respect to public utilities and except as provided in sections 43-512.06 and 70-101, personally identified private citizen account payment information, credit information on others supplied in confidence, and customer lists;

(10) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;

(11) Correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature in whatever form. The lawful custodian of such correspondence, memoranda, and records of telephone calls, whether created prior to, on, or after April 27, 1993, upon approval of the Executive Board of the Legislative Council, shall release such correspondence, memoranda, and records of telephone calls which are not designated as sensitive or confidential in nature to any person performing an audit of the Legislature, pursuant to subsection (3) of section 81-1120.27 to the person the Executive Board of the Legislative Council has contracted with pursuant to section 59-401.04. A member's correspondence, memoranda, and records of confidential telephone calls related to the performance of his or her legislative duties shall only be released to any other person with the explicit approval of the member;

(12) Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in Nebraska when necessary to protect such site from a reasonably held fear of theft, vandalism, or trespass. This section shall not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or the federal Native American Graves Protection and Repatriation Act; and

(13) Records or portions of records kept by public bodies which maintain collections of archaeological, historical, or paleontological

significance which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act or the federal Native American Graves Protection and Repatriation Act.

Sec. 7. Original sections 84-304, 84-304.01, 84-304.03, and 84-712.05, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 8. The following section is outright repealed: Section 50-401.04, Reissue Revised Statutes of Nebraska.

Sec. 9. Since an emergency exists, this act takes effect when passed and approved according to law.