

CHAPTER 862

H.B. No. 699

AN ACT

relating to the appointment, qualification, powers, and duties of the State Auditor.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 321.005, Government Code, is amended to read as follows:

Sec. 321.005. APPOINTMENT OF STATE AUDITOR. (a) ~~The [Not earlier than February 1 or later than February 15 of each odd-numbered year, the]~~ committee shall appoint a State Auditor to investigate all custodians of state funds, disbursing agents, and department personnel.

(b) The committee shall execute a written declaration of the person appointed State Auditor and file the declaration with the secretary of state.

(c) The State Auditor serves *at the will of* ~~[until a successor is appointed and qualifies.~~

~~[(d) The committee may discharge or remove the State Auditor at any time without a hearing and for any reason satisfactory to] the committee.~~

(d) ~~[(e)]~~ The committee shall fill any vacancy in the office of State Auditor.

(e) ~~[(f)]~~ A majority vote of the committee members is sufficient to exercise any action authorized by this section.

SECTION 2. Section 321.006, Government Code, is amended to read as follows:

Sec. 321.006. REQUIREMENTS FOR APPOINTMENT. *To be eligible for appointment as [The person appointed] State Auditor, a person must[*:

~~[(1) have been a citizen and resident of the state for at least five years immediately before appointment;~~

~~[(2) be a certified public accountant of Texas with at least five years' experience as a certified public accountant immediately before appointment;~~

~~[(3)] have unquestioned integrity and moral character and must have had at least five years' experience:~~

~~(1) as a certified public accountant in this or another state; and~~

~~(2) in a professional or administrative position a major duty of which involved fiscal management, the review of fiscal management, or the auditing or review of operational efficiency or program performance]; and~~

~~[(4) have sufficient experience in business and finance to properly discharge the functions of the office].~~

SECTION 3. Section 321.008(a), Government Code, is amended to read as follows:

(a) To qualify for office, the State Auditor must take the constitutional oath of office and execute a bond in *an amount determined by the committee to be sufficient to protect the state's interests, [the amount of \$25,000] payable to the governor.* The bond must be approved by the committee, be conditioned on the faithful discharge of his duties, and have a solvent surety company as surety. *At least once in each five-year period, the committee shall review the amount of the bond and adjust the amount as necessary to take account of changed conditions.*

SECTION 4. Section 321.011(a), Government Code, is amended to read as follows:

(a) The State Auditor may employ *a professional staff, including* assistant auditors and stenographic and clerical personnel.

SECTION 5. Section 321.013, Government Code, is amended to read as follows:

Sec. 321.013. POWERS AND DUTIES OF STATE AUDITOR. (a) The State Auditor shall *conduct audits of all departments, including institutions of higher education, as specified in the audit plan. At the direction of the committee, the State Auditor shall conduct an audit or investigation of any entity receiving funds from the state.*

(b) *The State Auditor shall conduct the audits in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, the Governmental Accounting Standards Board, the United States General Accounting Office, or other professionally recognized entities that prescribe auditing standards.*

(c) *The State Auditor shall determine the audit plan for the state for each fiscal year. In devising the plan, the State Auditor shall consider recommendations concerning coordination of agency functions made by the committee composed of the Legislative Budget Board, Sunset Advisory Commission, and State Auditor's Office. The plan shall provide for auditing of federal programs at least once in each fiscal biennium and shall ensure that audit requirements of all bond covenants and other credit or financial agreements are satisfied. The committee shall review and approve the plan.*

(d) *At any time during an audit or investigation, the State Auditor may require the assistance of the administrative head, official, auditor, accountant, or other employees of the entity being audited or investigated.*

(e) *The State Auditor is entitled to access to all of the books, accounts, confidential or unconfidential reports, vouchers, or other records of information in any department or entity subject to audit, including access to all electronic data. However, the State Auditor has access to information and data the release of which is restricted under federal law only with the approval of the appropriate federal administrative agency, and the State Auditor shall have access to copyrighted or restricted information obtained by the Office of the Comptroller of Public Accounts under subscription agreements and utilized in the preparation of economic estimates only for audit purposes.*

(f) *The State Auditor may conduct financial audits, compliance audits, economy and efficiency audits, effectiveness audits, special audits, and investigations as defined by this chapter and specified in the audit plan.*

(g) *To the extent that the performance of the powers and duties of the State Auditor under law is not impeded or otherwise hindered, the State Auditor shall make reasonable efforts to coordinate requests for employee assistance under Subsection (d) or requests for access to books, accounts, vouchers, records, or data under Subsection (e) so as not to hinder the daily operations of the audited entity.*

(h) *The State Auditor may not conduct audits of private entities concerning collection or remittance of taxes or fees to the state if the entity is subject to audit by another state agency for the taxes or fees.*

(i) *If the State Auditor decides a change in an accounting system is necessary, the State Auditor shall consider the present system of books, records, accounts, and reports to ensure that the transition will be gradual and that the past and present records will be coordinated into the new system[;*

~~[(1) perform an audit of all governmental accounts, books, and other financial records of any state officer or department;~~

~~[(2) prepare a written report of the audit and furnish the report to the committee and to other persons designated in this chapter;~~

~~[(3) examine and audit all fiscal books, records, and accounts of each custodian of public funds and disbursing officer of this state;~~

~~[(4) independently verify all assets, liabilities, revenues, and expenditures of each department;~~

~~[(5) require any changes in the accounting system or records of a department that the State Auditor believes will augment or provide a uniform, adequate, and efficient system of records and accounting;~~

~~[(6) work with the executive officer of each newly created department to outline and install a uniform, adequate, and efficient system of records and accounting;~~

~~[(7) keep a complete, accurate, and adequate record of the fiscal transactions of the state auditor's office;~~

~~[(8) devote his entire time to the discharge of his duties;~~

~~[(9) maintain an office in the Capitol Complex; and~~

~~[(10) perform any other duty required by law.~~

~~[(b) The committee shall direct the State Auditor to make any special audit or investigation that the committee considers necessary to carry out the purpose of this chapter or to assist the legislature in the proper discharge of its duties.~~

~~[(c) If the State Auditor decides a change in an accounting system is necessary, the State Auditor shall consider the present system of books, records, accounts, and reports to ensure that the transition will be gradual and that the past and present records will be coordinated into the new system. It is the purpose of this chapter to install a unified and coordinated system of accounting and records in each department].~~

SECTION 6. Chapter 321, Government Code, is amended by adding Sections 321.0131-321.0136 to read as follows:

*Sec. 321.0131. FINANCIAL AUDIT. A financial audit is an audit to determine:*

(1) *in the case of the state or a department, whether the records, books, and accounts of the audited entity accurately reflect its financial and fiscal operations;*

(2) *whether the audited entity is maintaining effective accounting control over revenues, obligations, expenditures, assets, and liabilities;*

(3) *whether the accounting and record-keeping of collections of state revenues and receipts by the audited entity are fair, accurate, and in accordance with law;*

(4) *whether the accounting and record-keeping of money or negotiable securities or similar assets handled by the audited entity on behalf of the state or received from the state and held in trust by the audited entity are proper, accurate, and in accordance with law; and*

(5) *whether financial, program, and statistical reports of the audited entity are fairly presented.*

**Sec. 321.0132. COMPLIANCE AUDIT.** *A compliance audit is an audit to determine:*

(1) *whether the audited entity has obligated, expended, received, and used state funds in accordance with the purpose for which those funds have been appropriated or otherwise authorized by law;*

(2) *whether the audited entity has obligated, expended, received, and used state funds in accordance with any limitations, restrictions, conditions, or mandatory directions imposed by law on those obligations, expenditures, receipts, or uses;*

(3) *in the case of a local or private entity or agency, whether the records, books, and accounts of the audited entity fairly and accurately reflect its financial and fiscal operations relating to the obligation, receipt, expenditure, and use of state funds or funds represented as being collected for a state purpose;*

(4) *whether the collections of state revenues and receipts by the audited entity are in accordance with applicable laws and regulations; and*

(5) *whether money or negotiable securities or similar assets handled by the audited entity on behalf of the state or received from the state and held in trust by the audited entity have been properly and legally administered.*

**Sec. 321.0133. ECONOMY AND EFFICIENCY AUDIT.** *An economy and efficiency audit is an audit to determine:*

(1) *whether the audited entity is managing or utilizing its resources, including state funds, personnel, property, equipment, and space, in an economical and efficient manner;*

(2) *causes of inefficiencies or uneconomical practices, including inadequacies in management information systems, internal and administrative procedures, organizational structure, use of resources, allocation of personnel, purchasing, policies, and equipment; and*

(3) *whether financial, program, and statistical reports of the audited entity contain useful data and are fairly presented.*

**Sec. 321.0134. EFFECTIVENESS AUDIT.** (a) *An effectiveness audit is an audit to determine, according to established or designated program objectives, responsibilities or duties, statutes and regulations, program performance criteria, or program evaluation standards:*

(1) *whether the objectives and intended benefits are being achieved efficiently and effectively; and*

(2) *whether the program duplicates, overlaps, or conflicts with another state program.*

(b) *An effectiveness audit may be scheduled only when the audited entity is not scheduled for review under the Texas Sunset Act (Chapter 325).*

**Sec. 321.0135. SPECIAL AUDIT.** *A special audit is a financial audit of limited scope.*

*Sec. 321.0136. INVESTIGATION. An investigation is an inquiry into specified acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt, or use of state funds, or into specified financial transactions or practices that may involve such impropriety, malfeasance, or nonfeasance.*

SECTION 7. Section 321.014, Government Code, is amended to read as follows:

Sec. 321.014. *AUDIT [AUDITS AND] REPORTS. (a) The State Auditor shall prepare a written report for each audit conducted by the State Auditor.*

*(b) The written report must include a management letter with comments about internal controls, compliance with state or federal laws, and recommendations for improving operations or program effectiveness, as applicable. The report must also include an opinion on fair presentation of financial statements if the State Auditor considers an opinion to be necessary.*

*(c) The State Auditor shall file a copy of each report prepared under this section with:*

- (1) the governor;*
- (2) the lieutenant governor;*
- (3) the speaker of the house of representatives;*
- (4) the secretary of state;*
- (5) the Legislative Reference Library;*
- (6) the chairman of the governing body and the administrative head of each entity that is the subject of the report; and*
- (7) members of the legislature on a committee with oversight responsibility for the entity or program that is the subject of the report.*

*(d) The State Auditor shall maintain a complete file containing:*

- (1) copies of each audit report; and*
- (2) audit work papers and other evidence relating to the work of the State Auditor.*

*(e) The State Auditor shall maintain the files required by Subsection (d) for at least eight years after the date on which the information is filed [conduct each audit as directed by the committee and as prescribed by this chapter.*

~~[(b) The State Auditor shall conclude each audit and make the required report not later than the 30th day before the date on which a regular legislative session convenes.~~

~~[(c) The State Auditor is entitled to have access at all times to the books, accounts, confidential or unconfidential reports, vouchers, or other records of information in any department.~~

~~[(d) At all times during the inspection, examination, and audit of the books, accounts, and records of a department, the State Auditor may require the assistance of each departmental executive, official, auditor, accountant, or other employee.~~

~~[(e) In each report, the State Auditor shall call attention to any funds that the State Auditor believes have not been expended in accordance with law or legislative appropriation and shall recommend to the legislature the form or manner of appropriations that will avoid improper expenditures in the future.~~

~~[(f) The committee shall direct the reproduction of as many copies of a report as the committee decides are necessary.~~

~~[(g) The State Auditor shall keep a complete file of:~~

- ~~(1) copies of each audit report, examination, or investigation;~~
- ~~(2) copies of all other reports or releases issued by the State Auditor or his office; and~~
- ~~(3) audit work papers and other evidence relating to the work of the State Auditor].~~

SECTION 8. Section 321.015, Government Code, is amended to read as follows:

Sec. 321.015. *SPECIAL REPORTS.* (a) *Not later than two months before a regular legislative session convenes, the State Auditor shall make a special report to the committee.*

(b) *The special report must contain:*

(1) *evaluations of the effectiveness of the audit programs performed by the executive branch, including revenue audits, audits of contractors and sub-grantees, and internal audits of departments;*

(2) *a report on fiscal accountability in the state, including each department's responsibility for establishing and maintaining adequate internal controls and the status of accounting systems in the state, including:*

(A) *duplication;*

(B) *needs for automation;*

(C) *lack of standardization;*

(D) *controls; and*

(E) *nonuse of modern methods of operation; and*

(3) *a summary report of audit work conducted by the State Auditor during the biennium* ~~[EXAMINATION OF STATE DEPARTMENTS. (a) The State Auditor shall thoroughly examine each department with special regard to:~~

~~[(1) the activities of the department;~~

~~[(2) the duplication of effort between the department and other departments; and~~

~~[(3) the quality of service provided by subordinate employees in the department.~~

~~[(b) After completing an examination under this section, the State Auditor shall furnish the chief executive officer and governing body of the department with a report concerning, among other things, the following:~~

~~[(1) the efficiency of subordinate employees;~~

~~[(2) the status and condition of all public funds the department controls;~~

~~[(3) the amount of duplicate work done by the department and other state departments;~~

~~[(4) the operating expense of the department;~~

~~[(5) any breach of duty or trust by a department, officer, or any other custodian or disbursement officer of state funds; and~~

~~[(6) any suggested changes that might be economical, reduce the number of clerical and other employees, and eliminate duplication and inefficiency.~~

~~[(c) The State Auditor shall file a copy of each report with:~~

~~[(1) the governor;~~

~~[(2) the lieutenant governor;~~

~~[(3) the speaker of the house of representatives;~~

~~[(4) the secretary of state; and~~

~~[(5) each member of the legislature.~~

~~[(d) The State Auditor shall prepare an annual report containing, among other things, the following:~~

~~[(1) a copy of or the substance of each report made to a department;~~

~~[(2) a summary of the changes made in a department's system of accounts and records; and~~

~~[(3) specific recommendations to the legislature concerning proposed amendments to existing laws or enactment of new laws that will improve the functioning of various departments so that more efficient service may be rendered and the cost of government reduced.~~

~~[(e) The State Auditor shall confine the recommendations to matters properly coming within the jurisdiction of the state auditor as prescribed by this chapter.~~

~~[(f) The State Auditor may not include a recommendation as to the source from which taxes may be raised to meet governmental expense.~~

~~[(g) The State Auditor shall file the annual report with the governor and shall file copies of the report with:~~

~~[(1) the lieutenant governor;~~

~~[(2) the speaker of the house of representatives; and~~

~~[(3) the secretary of state.~~

~~[(h) All reports filed with the secretary of state shall be open to public inspection].~~

SECTION 9. Section 321.016, Government Code, is amended to read as follows:

Sec. 321.016. IMPROPER PRACTICES AND ILLEGAL TRANSACTIONS. (a) If in the course of an audit the State Auditor finds evidence of improper practices of financial administration, ~~[incompetent personnel, or]~~ inadequate fiscal records, *uneconomical use of resources, or ineffective program performance*, the State Auditor, *after consulting with the head of the agency*, shall immediately report the evidence to the governor, the committee, and the *administrative head and the chairman of the governing body* of the affected department.

(b) If in the course of an audit the State Auditor finds evidence of an illegal transaction, the State Auditor, *after consulting with the head of the agency*, shall immediately report the transaction to the governor, the committee, and the *appropriate legal authority* ~~[attorney general]~~.

(c) Immediately after the committee receives a report from the State Auditor alleging *improper practices of financial administration, uneconomical use of resources, or ineffective program performance* ~~[incompetent personnel or inadequate records]~~, the committee shall review the report and *shall consult with and may* hold hearings with the *administrative head and the chairman of the governing body* of the affected department regarding the report ~~[incompetent personnel or inadequate records]~~.

~~[(d) After the hearings the committee shall report to the head of the affected department and request the removal or replacement of any incompetent personnel or the installation of any necessary fiscal records.~~

~~[(e) If the administrative head or the governing body of the affected department refuses to make the changes recommended by the committee at the hearing or provide any additional information or reports requested [refuses to remedy the incompetency or to install the proper fiscal records], the committee shall report the refusal to the legislature.~~

SECTION 10. Section 321.019(a), Government Code, is amended to read as follows:

(a) An officer or employee of this state or a governmental unit of the state commits an offense if the officer or employee:

(1) refuses to permit the State Auditor to examine or have access to the books, accounts, reports, vouchers, papers, documents, *or electronic data to which the State Auditor is entitled under Section 321.013(e)*, or to the cash drawer, or cash from the officer's or employee's department;

(2) interferes with an examination by the State Auditor; or

(3) refuses to make a report required by this chapter.

SECTION 11. (a) Sections 321.009 and 321.017, Government Code, are repealed.

(b) Sections 1, 2, and 5, Chapter 843, Acts of the 69th Legislature, Regular Session, 1985, are repealed.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

**Ch. 862, § 12**

**70th LEGISLATURE—REGULAR SESSION**

Passed by the House on March 25, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 699 on May 19, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 15, 1987, by a viva-voce vote.

Approved June 19, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment.