

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

SENATE BILL 723

By: Senator Hickey
By: Representative Broadaway

For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS LAW CONCERNING THE DIVISION OF LEGISLATIVE AUDIT; TO RENAME THE DIVISION OF LEGISLATIVE AUDIT AS "ARKANSAS LEGISLATIVE AUDIT"; TO AMEND CERTAIN PROVISIONS OF LAW PERTAINING TO THE DIVISION OF LEGISLATIVE AUDIT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND ARKANSAS LAW CONCERNING THE DIVISION OF LEGISLATIVE AUDIT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Division of Legislative Audit renamed "Arkansas Legislative Audit".

(a)(1) The Division of Legislative Audit, as it is referred to or empowered throughout the Arkansas Code, is renamed.

(2) In its place, Arkansas Legislative Audit is established, succeeding to the general powers and responsibilities previously assigned to the Division of Legislative Audit.

(3) The Legislative Auditor shall identify and revise all interagency documents, financial instruments, funds, and other necessary legal documents in order to effect this change.

(b) This act does not impair the powers and authority of the Division of Legislative Audit before the effective date of this act.

(c) Appropriations authorized for the personal services and operating



expenses of the Division of Legislative Audit may be utilized for the personal services and operating expenses of Arkansas Legislative Audit.

(d) This act does not impair the continued effectiveness of rules or orders promulgated or issued by the Division of Legislative Audit before the effective date of this act.

(e) The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act.

SECTION 2. Arkansas Code § 10-2-129(a)(1), concerning drafting and information requests to legislative employees, is amended to read as follows:

(1) "Legislative employee" means an employee of the House of Representatives, the Senate, the Bureau of Legislative Research, ~~the Division of Arkansas~~ Arkansas Legislative Audit, and the Arkansas Code Revision Commission; and

SECTION 3. Arkansas Code § 10-3-411(b)(1), concerning the investigation and audit of state and local entities, is amended to read as follows:

(b)(1) Any member of the General Assembly, by written request filed with the Legislative Joint Auditing Committee at least six (6) days prior to any regular or special meeting of the Legislative Joint Auditing Committee, may request an investigation or audit of any entity for which the Legislative Joint Auditing Committee and ~~the Division of Arkansas~~ Arkansas Legislative Audit has the authority to audit.

SECTION 4. Arkansas Code § 10-3-1106 is amended to read as follows:

10-3-1106. Additional legislative space.

In addition to the space now provided in the State Capitol Building for the General Assembly and its committees, the following additional space in the State Capitol Building is designated as legislative space if the Joint Interim Committee on Legislative Facilities determines that it is needed for legislative committee space or for other legislative facilities:

(1) The office space on the north wing of the first floor of the State Capitol Building currently used by the Division of Purchasing, the Department of Correction, the Department of Parks and Tourism, and the Department of Commerce;

(2) The office space on the west side of the first floor of the

State Capitol Building presently used by the Public Employees' Retirement System, which shall be made available to ~~the Division of~~ Arkansas Legislative Audit, or such other legislative uses as may be determined by the Joint Interim Committee on Legislative Facilities;

(3) The office space on the southeast wing of the first floor of the State Capitol Building presently assigned to the Accounting Division of the Department of Finance and Administration, and any other portion of the space assigned to the Department of Finance and Administration the Joint Interim Committee on Legislative Facilities determines is needed for legislative use;

(4) The office space on the southeast wing of the second floor of the State Capitol Building currently assigned for use by the Budget Division of the Department of Finance and Administration. The space now provided for the Arkansas Economic Development Commission on the southwest wing of the second floor of the State Capitol Building shall be made available for the Budget Division of the Department of Finance and Administration unless the director determines that the location of the Budget Division in some other facilities would be more advantageous to the agency;

(5) The former Supreme Court Chamber on the south end of the second floor of the State Capitol Building, to be air conditioned and serve as a large Senate committee room, but preserving the present decor of the chamber, i.e., changes contemplated involve only such things as air conditioning, carpeting, repainting, improved lighting, and installation of sound and recording equipment, and necessary committee tables and chairs, and other minor changes, essentially preserving the room in its present state; and

(6) The space presently assigned ~~the Division of~~ Arkansas Legislative Audit on the west portion of the fourth floor of the State Capitol Building shall be available for the Bureau of Legislative Research of the Legislative Council, Budget and Fiscal Review Section, or such other uses as determined by the Joint Interim Committee on Legislative Facilities.

SECTION 5. Arkansas Code § 10-3-2102(f)(1), concerning duties under the Continuing Adequacy Evaluation Act of 2004, is amended to read as follows:

(1) Reviewing a report prepared by ~~the Division of~~ Arkansas

Legislative Audit compiling all funding received by public schools for each program;

SECTION 6. Arkansas Code § 10-4-305(c)(1), concerning a notice of deficiencies under the Arkansas Governmental Compliance Act, is amended to read as follows:

(c)(1) The Legislative Joint Auditing Committee may require a municipal official who is responsible for any deficiencies under subsection (a) of this section to attend relevant training courses provided by the Arkansas Municipal League, ~~the Division of~~ Arkansas Legislative Audit, or other appropriate training program.

SECTION 7. Arkansas Code § 10-4-401 is amended to read as follows:
10-4-401. ~~Division of~~ Arkansas Legislative Audit – Creation.

(a) There is created under the authority of the General Assembly a ~~Division of Legislative Audit~~ an agency known as "Arkansas Legislative Audit".

(b) ~~The division~~ Arkansas Legislative Audit shall be headed by the Legislative Auditor, who shall be selected by the Legislative Joint Auditing Committee.

SECTION 8. Arkansas Code § 10-4-402(a)(3), concerning the definition of "financial audit", is amended to read as follows:

(3) "Financial audit" means a systematic examination of the financial statements of an entity and the related supporting evidence for the purpose of expressing an opinion on the fairness with which they present, in all material respects, financial position, results of operations, and its cash flows in conformity with accounting principles generally accepted in the United States, another comprehensive basis of accounting, or a regulatory basis ~~of presentation~~, as applicable;

SECTION 9. Arkansas Code § 10-4-403(b)(2), concerning the authority of the Legislative Auditor, is amended to read as follows:

(2)(A) ~~Nothing in this~~ This section shall be construed as authorizing or permitting ~~does not authorize or permit~~ the Legislative Auditor to release ~~of~~ information;

(i) When otherwise prohibited by law; or
 (ii) ~~not~~ Not subject to public inspection under ~~the provisions of~~ the Freedom of Information Act of 1967, § 25-19-101 et seq., or other applicable law.

(B) All records, documents, correspondence, or other data of a person, foundation, nonprofit corporation, or any other entity holding other funds that would infringe upon the rights, privacy, or confidentiality of donors of private funds to the person, foundation, nonprofit corporation, or other entity are exempt from public disclosure when in the possession of the Legislative Auditor.

(C) Any working papers or other data relating to the donor information examined by the Legislative Auditor under this chapter are confidential and exempt from public disclosure.

SECTION 10. Arkansas Code § 10-4-407(6), concerning the duties of the Legislative Auditor, is amended to read as follows:

(6) Require, on forms prescribed or made available, the filing with ~~the Division of~~ Arkansas Legislative Audit of financial reports at such times as the Legislative Auditor deems advisable.

SECTION 11. Arkansas Code § 10-4-408 is amended to read as follows:

10-4-408. Disbursing officer – Payment of salaries.

(a)(1) The Legislative Auditor is designated as disbursing officer for ~~the Division of~~ Arkansas Legislative Audit.

(2) All vouchers issued in the payment of salaries and expenses incurred in the operations of ~~the division~~ Arkansas Legislative Audit shall be approved by the Legislative Auditor or the Legislative Auditor's authorized designee or designees before the salaries and expenses are paid.

(b) In case a vacancy exists in the position of Legislative Auditor, the Legislative Joint Auditing Committee may designate a disbursing agent or agents for ~~the division~~ Arkansas Legislative Audit who shall serve until the position of Legislative Auditor is filled.

(c) The salary of the Legislative Auditor and the other employees of ~~the division~~ Arkansas Legislative Audit shall be paid in the same manner and through the same procedure used for the payment of salaries of other state employees.

SECTION 12. Arkansas Code § 10-4-409 is amended to read as follows:
10-4-409. Personnel.

(a) Subject to ~~a biennial~~ an annual appropriation therefor, all employees of ~~the Division of~~ Arkansas Legislative Audit shall be selected and appointed by the Legislative Auditor.

(b)(1) The Legislative Auditor shall be free to select the most efficient personnel available for each position in ~~the division~~ Arkansas Legislative Audit, to the end that he or she may render to the members of the General Assembly that service which the members have a right to expect.

(2) The Legislative Auditor may conduct such professional examination as he or she may deem expedient in determining the qualifications of the persons whom he or she contemplates placing on his or her staff.

(c)(1) No person related to any member of the General Assembly or to the Legislative Auditor in the first degree of consanguinity or affinity may be employed on the staff of ~~the division~~ Arkansas Legislative Audit.

(2) However, subdivision (c)(1) of this section does not apply if an individual is initially employed with ~~the division~~ Arkansas Legislative Audit before his or her relative is elected as a member of the General Assembly.

(d)(1) It is the intention and desire of the General Assembly to free the Legislative Auditor and his or her staff from partisan politics.

(2) It is declared to be against public policy for any member of the General Assembly or any official or employee of the entities of the state or political subdivisions of the state to recommend or suggest the appointment of any person to a position on the staff of the Legislative Auditor.

SECTION 13. Arkansas Code § 10-4-410 is amended to read as follows:
10-4-410. Audit costs.

(a)(1) The Legislative Auditor shall cause to be maintained a sufficient accounting of the audit costs incurred by ~~the Division of~~ Arkansas Legislative Audit in auditing entities of the state and political subdivisions of the state.

(2) The audit costs shall provide a basis for determining a reasonable reimbursement from entities of the state and political

subdivisions of the state for the cost of auditing federal funds received by these entities.

(b)(1) The administrative cost of auditing political subdivisions of the state shall be paid from the Ad Valorem Tax Fund as prescribed by § 19-5-906.

(2) If these taxes or any part thereof are no longer collected or deposited into the State Treasury or if there is a diminution in these taxes, then the operating cost of auditing the political subdivisions of the state incurred by ~~the Division of~~ Arkansas Legislative Audit shall be paid from other moneys deposited into the General Revenue Fund Account of the State Apportionment Fund.

(3) As soon as practical after the close of each fiscal year, the Legislative Auditor shall certify to the Chief Fiscal Officer of the State the amount of funds expended during the fiscal year just ending which is to be allocated to the state audit function and to the local audit function of ~~the Division of~~ Arkansas Legislative Audit.

(4) The Chief Fiscal Officer of the State shall utilize this certification in determining those expenses which are eligible to be reimbursed from the Ad Valorem Tax Fund.

(c) If it is determined by the Legislative Joint Auditing Committee that the reimbursement for the auditing of entities of the state is appropriate, the Legislative Auditor and the Director of the Department of Finance and Administration shall develop guidelines for effecting proper budgetary and accounting procedures for the reimbursements.

SECTION 14. Arkansas Code § 10-4-411(b)(2), concerning audits of entities of the state, is amended to read as follows:

(2) If an annual financial audit of an entity of the state is deemed by the Legislative Auditor as necessary for the audit of the comprehensive annual financial report of the State of Arkansas, then any contract with a private certified public accountant for the entity's annual financial audit shall include provisions requiring the annual financial audit to be completed and filed with ~~the Division of~~ Arkansas Legislative Audit by a date determined by the Legislative Auditor.

SECTION 15. Arkansas Code § 10-4-412(c), concerning audits of counties

and municipalities, is amended to read as follows:

(c) Agreed-Upon Procedures and Compilation Reports.

(1) As an alternative to a financial audit, the Legislative Auditor may conduct an agreed-upon procedures and compilation engagement of the records and accounts of all municipal or county offices, officials, or employees.

(2) For purposes of this subsection, agreed-upon procedures and compilation engagements shall be conducted in accordance with standards established by the American Institute of Certified Public Accountants and subject to the minimum procedures prescribed by the Legislative Joint Auditing Committee.

(3)(A) Unless otherwise provided by law, the governing body of a municipality may choose and employ accountants licensed and in good standing with the Arkansas State Board of Public Accountancy to conduct agreed-upon procedures and compilation engagements.

(B) All reports shall be filed with the Legislative Auditor within ten (10) days of issuance.

SECTION 16. Arkansas Code § 10-4-413(c), concerning audits of schools, is amended to read as follows:

(c) Regulatory Basis of Presentation.

(1)(A) For school financial audits, the financial statements shall be presented on a fund basis format with, as a minimum, the general fund and the special revenue fund presented separately and all other funds included in the audit presented in the aggregate.

(B) The financial statements shall consist of the following:

- (i) A balance sheet;
- (ii) A statement of revenues, expenditures, and changes in fund balances;
- (iii) A comparison of the final adopted budget to the actual expenditures for the general fund of the entity and the special revenue fund of the entity; and
- (iv) Notes to the financial statements.

(C) The report shall include a report on internal control over financial reporting and on compliance and other matters based on an

audit of financial statements performed in accordance with Government Auditing Standards.

~~(C)~~(D) The report shall include as supplemental information a schedule of capital assets, including:

- (i) Land;
- (ii) Buildings; and
- (iii) Equipment.

~~(D)~~(E) The State Board of Education shall promulgate rules necessary to administer the regulatory basis ~~of presentation~~ provided in this subsection.

(2) ~~Alternative Basis of Presentation.~~

(A) As an alternative to ~~the presentation prescribed in~~ subdivision (c)(1) of this section, the governing body of a school may ~~require~~ adopt a resolution requiring its annual financial audit to be performed and financial statements presented in accordance with the guidelines prescribed by the ~~Governmental~~ Government Accounting Standards Board, the American Institute of Certified Public Accountants, and the United States Government Accountability Office, if applicable.

(B) The report shall include a report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with ~~Governmental~~ Government Auditing Standards.

SECTION 17. Arkansas Code § 10-4-414(b), concerning audits of prosecuting attorneys, is amended to read as follows:

(b) ~~Regulatory Basis of Presentation.~~

(1) For prosecuting attorney financial audits, the financial statements shall be presented on a fund basis format with, at a minimum, the general fund presented separately and all other funds included in the audit presented in the aggregate.

(2) The financial statements shall consist of the following:

- (A) A balance sheet;
- (B) A statement of revenues (receipts), expenditures (disbursements), and changes in fund equity (balances); and
- (C) Notes to the financial statements.

(3) The report shall include as supplemental information a

schedule of capital assets, including:

- (A) Land;
- (B) Buildings; and
- (C) Equipment.

SECTION 18. Arkansas Code § 10-4-416 is amended to read as follows:

10-4-416. Access to records.

(a)(1) The Legislative Auditor and authorized employees of ~~the Division of Arkansas~~ Legislative Audit shall have access at all times to any books, accounts, reports, electronic data, vouchers, or other records, confidential or otherwise, of any entity of the state or political subdivision of the state that are deemed necessary to audit transactions related to public funds.

(2) Any business contracting with an entity of the state or a political subdivision of the state to provide electronic or other access to records of a public entity shall provide ~~the Division of Arkansas~~ Legislative Audit access to the public entity's records without charge or reimbursement.

(b)(1) In the performance of the Legislative Auditor's duties, the Legislative Auditor or the Legislative Auditor's authorized assistants may ascertain, inspect, confirm, copy, audit, and examine any financial records, documents, or accounts of any financial institution, business, or nonprofit entity or any other person or entity regarding transactions or relationships with an entity of the state or a political subdivision of the state.

(2) In the investigation of documents, books, and records regarding receipt, expenditure, or disbursement of other funds, the Legislative Auditor shall determine, subject to approval of the Legislative Joint Auditing Committee or its executive committee, that the investigation of the documents, books, and records is necessary to verify any audit of an entity of the state or a political subdivision of the state or to investigate misappropriation of other funds.

(c) No financial institution, business, nonprofit entity, or any other person or entity shall be liable for making available to the Legislative Auditor any of the information required by the Legislative Auditor under this section.

(d)(1) ~~Nothing in this section shall be construed as authorizing or permitting~~ This section does not authorize or permit the Legislative Auditor

to release of information:

(A) When otherwise prohibited by law; or

(B) ~~not~~ Not subject to public inspection under the ~~provisions of the~~ Freedom of Information Act of 1967, § 25-19-101 et seq., or other applicable law.

(2)(A) All records, documents, correspondence, or other data of a person, foundation, nonprofit corporation or any other entity holding other funds that would infringe upon the rights, privacy, or confidentiality of donors of private funds to the person, foundation, nonprofit corporation, or other entity are exempt from public disclosure when in the possession of the Legislative Auditor.

(B) Any working papers or other data relating to the donor information examined by the Legislative Auditor under this chapter are confidential and exempt from public disclosure.

(e) Records that are exempt from public disclosure in the hands of the entity's custodian remain exempt from public disclosure in the hands of the Legislative Auditor and ~~the Division of~~ Arkansas Legislative Audit.

(f) Any person knowingly providing false documents, records, or other data to the Legislative Auditor or his or her authorized assistants, upon the finding by a circuit court, shall be guilty of providing false information and shall be punished in the same manner as a person guilty of tampering with a public record, § 5-54-121.

SECTION 19. Arkansas Code § 10-4-417 is amended to read as follows:

10-4-417. Presentation and filing of audit reports.

(a) All audit reports prepared by ~~the Division of~~ Arkansas Legislative Audit and any audit report required to be filed with the Legislative Auditor or ~~the Division of~~ Arkansas Legislative Audit shall be presented to the Legislative Joint Auditing Committee or a standing committee thereof.

(b) Copies of all audit reports prepared by ~~the Division of~~ Arkansas Legislative Audit, and any audit report required to be filed with the Legislative Auditor or ~~the division~~ Arkansas Legislative Audit shall be presented on the website of ~~the division~~ Arkansas Legislative Audit in a manner suitable for downloading and printing.

(c) All final reports shall be open to public inspection after presentation to the Legislative Joint Auditing Committee or after being

approved for early release by the cochaIRS of the Legislative Joint Auditing Committee.

(d)(1) The governing body and executive official of an entity of the state or political subdivision of the state shall receive a copy of the entity's audit report prior to presentation to the Legislative Joint Auditing Committee.

(2) Until the reports are presented to the Legislative Joint Auditing Committee or approved for early release by the cochaIRS of the Legislative Joint Auditing Committee, the reports are not considered public information and are not open to public inspection.

(e) The exemption from public inspection under subsections (c) and (d) of this section applies to all reports in the custody or possession of any person before presentation of the report to the Legislative Joint Auditing Committee or approval for early release, regardless of the actual physical location of the report.

SECTION 20. Arkansas Code § 10-4-419(f), concerning reports of improper or illegal practices, is amended to read as follows:

(f)(1) By June 30 of each year, the Attorney General and each prosecuting attorney to whom the Legislative Joint Auditing Committee or the Legislative Auditor has reported a matter under this section shall file with the Legislative Joint Auditing Committee a disposition report on the status of the matters that have not been previously reported as resolved to the Legislative Joint Auditing Committee.

(2) A disposition report shall address all matters that have not been previously reported as resolved under subdivision (f)(1) of this section prior to and during the preceding calendar year.

~~(2)(3) Each A~~ disposition report shall include, ~~but is not limited to~~ without limitation:

(A) The date the matter was reported to the Attorney General or the prosecuting attorney;

(B) The amount of loss or funds unaccounted for in connection with the matter;

(C) The status or disposition of the matter; and

(D) Other comments pertinent to the investigation or disposition of the matter.

SECTION 21. Arkansas Code § 10-4-422 is amended to read as follows:

10-4-422. Records – Public inspection.

(a) The Legislative Auditor shall keep, or cause to be kept, a complete, accurate, and adequate set of fiscal transactions of ~~the Division of~~ Arkansas Legislative Audit.

(b) The Legislative Auditor shall also keep paper, digital, or electronic copies of all audit reports, examinations, investigations, and any other reports or releases issued by the Legislative Auditor.

(c)(1) All working papers, including communications, notes, memoranda, preliminary drafts of audit reports, and other data gathered in the preparation of audit reports by ~~the division~~ Arkansas Legislative Audit, are exempt from all provisions of the Freedom of Information Act of 1967, § 25-19-101 et seq., and are not to be considered public documents for purposes of inspection or copying under the Freedom of Information Act of 1967, § 25-19-101 et seq., or any other law of the State of Arkansas, except as provided in this subsection.

(2) After any audit report has been presented to members of the Legislative Joint Auditing Committee, the audit report and copies of any documents contained in the working papers of ~~the division~~ Arkansas Legislative Audit shall be open to public inspection, except documents specifically exempted from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., unsubstantiated allegations obtained in complying with ~~the provisions of the American Institute of Certified Public Accountants' Statement on Auditing Standards Number 99~~ auditing standards or other professional guidelines regarding the detection of fraud, and documents which disclose auditing procedures and techniques as defined in subdivision (c)(3) of this section.

(3) As used in this subsection:

(A) "Audit program" means the instructions and guidelines formulated by ~~the division~~ Arkansas Legislative Audit to inform its accountants about the examination procedures to be followed in the course of examining records and accounts to verify their accuracy, including verifications that the examination procedures have been followed; and

(B) "Documents which disclose auditing procedures and techniques" includes:

(i) Internal control questionnaires consisting of the checklist of accounting and administrative procedures employed by ~~the Division of~~ Arkansas Legislative Audit in the course of performing an audit; and

(ii) An audit program.

SECTION 22. Arkansas Code § 10-4-423 is amended to read as follows:
10-4-423. Seal.

The Secretary of State shall procure an official seal for ~~the Division of~~ Arkansas Legislative Audit.

SECTION 23. Arkansas Code § 10-4-424 is amended to read as follows:
10-4-424. Audit of ~~data processing~~ information systems operations.

(a) ~~The Division of~~ Arkansas Legislative Audit may conduct audits of all or any part of ~~automated data processing operations or systems~~ the information systems or operations of any entity of the state or political subdivision of the state.

(b)(1)(A) ~~Data processing charges~~ Charges incurred in the performance of information systems audits or audit-related tasks by ~~the division~~ Arkansas Legislative Audit shall be absorbed by the ~~state agency~~ entity of the state or political subdivision of the state ~~processing data for the computer application~~ being accessed or audited.

(B) However, the use shall not interfere with or impede normal ~~processing by the data processing installation~~ information systems operations.

(2) The ~~data processing~~ information systems provider shall provide requested data or other information or services to ~~the division~~ Arkansas Legislative Audit within ten (10) days of the request, unless another date is agreed to by the Legislative Auditor.

(c) The Department of Information Systems, its successor agency, or other entities of the state or political subdivisions of the state that provide Internet, network, or other computer services or information to an entity of the state or a political subdivision of the state shall provide access to all data, support, or other necessary information services to ~~the division~~ Arkansas Legislative Audit in connection with their functions at no cost to ~~the division~~ Arkansas Legislative Audit.

(d) In connection with any audit by ~~the division~~ Arkansas Legislative Audit, contractual providers of ~~data processing information systems~~ or other computer-related services to entities of the state or political subdivisions of the state shall cooperate and provide requested information at no cost to ~~the division~~ Arkansas Legislative Audit.

(e) All contracts by entities of the state and political subdivisions of the state with vendors for ~~data processing information systems~~ or other computer services shall contain a provision permitting ~~the division~~ Arkansas Legislative Audit access and authority to audit computer applications supplied by vendors.

SECTION 24. Arkansas Code § 10-4-426(a), concerning continuing professional education courses, is amended to read as follows:

(a) In addition to contracting with private entities, ~~the Division of~~ Arkansas Legislative Audit may contract and pay entities of the state or political subdivisions of the state or any of their part-time or full-time employees for services rendered or for materials, supplies, or other expenses incurred in conducting continuing professional education courses for the staff of ~~the division~~ Arkansas Legislative Audit.

APPROVED: 03/18/2015