

GOVERNMENT CODE

TITLE 3. LEGISLATIVE BRANCH

SUBTITLE C. LEGISLATIVE AGENCIES AND OVERSIGHT COMMITTEES

CHAPTER 321. STATE AUDITOR

**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 recommend the audit plan for the state for each year to the committee. In devising the plan, the State Auditor shall consider recommendations concerning coordination of agency functions made jointly by representatives of the Legislative Budget Board, Sunset Advisory Commission, and State Auditor's Office. The State Auditor shall also consider the extent to which a department has received a significant increase in appropriations, including a significant increase in federal or other money passed through to the department, and shall review

procurement activities for compliance with Section 2161.123. The plan shall provide for auditing of federal programs at least as often as required under federal law 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 and investigations, and, with specific authority from the committee, economy and efficiency audits, effectiveness audits, and special audits 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.

(j) In devising the audit plan under Subsection (c), the State Auditor shall perform risk assessments as required by law. The process of assessing risks to the state is the first stage of auditing, and all records of risk assessment are part of the working papers of the State Auditor. Accordingly, all documentation of risk assessments by the State Auditor is exempt from disclosure under Section 552.116.

(k) In devising the audit plan under Subsection (c), the State Auditor shall consider the performance of audits on contracts entered into by the Health and Human Services Commission that exceed \$100 million in annual value, including a contract between the commission and a managed care organization. The State Auditor shall collaborate with the financial managers in the Medicaid/CHIP Division of the commission in performing an audit described by this subsection. An audit described by this subsection:

(1) may be limited in scope to target an area of the contract that the State Auditor determines poses the highest financial risk to this state; and

(2) must determine whether the entity contracting with the commission has spent state money in accordance with the purposes authorized in the contract.

(l) The State Auditor may contract with a private auditor to audit a contract under Subsection (k).

(m) In devising the audit plan under Subsection (c), the State Auditor shall consider the performance of audits of programs operated by health and human services agencies that:

(1) have not recently received audit coverage; and

(2) have expenditures of less than \$100 million per year.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 862, Sec. 5, eff. Aug. 31, 1987; Acts 1991, 72nd Leg., 1st C.S., ch. 4, Sec. 9.03, eff. Aug. 22, 1991;

Acts 1995, 74th Leg., ch. 76, Sec. 5.95(37), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1122, Sec. 18, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1499, Sec. 1.04, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 785, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 326 (S.B. 20), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 909 (S.B. 894), Sec. 1, eff. September 1, 2017.

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.

Added by Acts 1987, 70th Leg., ch. 862, Sec. 6, eff. Aug. 31, 1987.

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.

Added by Acts 1987, 70th Leg., ch. 862, Sec. 6, eff. Aug. 31, 1987.

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.

Added by Acts 1987, 70th Leg., ch. 862, Sec. 6, eff. Aug. 31, 1987.

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).

Added by Acts 1987, 70th Leg., ch. 862, Sec. 6, eff. Aug. 31, 1987.

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

Added by Acts 1987, 70th Leg., ch. 862, Sec. 6, eff. Aug. 31, 1987.

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.

Added by Acts 1987, 70th Leg., ch. 862, Sec. 6, eff. Aug. 31, 1987.

Sec. 321.0137. INDEPENDENT AUDIT OF JUNIOR COLLEGE DISTRICT. (a) At a reasonable time in advance of an independent audit of a junior college district, the state auditor shall provide the presiding officer of the district's governing body and the chief executive officer of the district with written information relating to the procedures for and scope of the audit. The state auditor shall include in the materials information describing:

(1) how the appropriate representatives of the district may participate in the audit planning process; and

(2) how the district may request information or assistance in preparing for the audit from the state auditor.

(b) The state auditor shall seek the recommendations of the Texas Higher Education Coordinating Board in preparing materials to be provided under Subsection (a).

Sec. 321.0138. REVIEW OF STATE TAX SETTLEMENTS AND OTHER DECISIONS. (a) This section applies to:

(1) a settlement of a claim for a tax, refund, or credit of a tax, penalty, or interest imposed by Title 2, Tax Code;

(2) a settlement of a taxpayer suit under Chapter 112, Tax Code; or

(3) any circumstance in which a taxpayer received a warrant, offset, check, payment, or credit from the comptroller or comptroller's office arising from the filing of a tax return with the state.

(b) The state auditor and the committee shall review the comptroller's records of all tax refunds, credits, payments, warrants, offsets, checks, and settlements for the preceding six years from the effective date of this section. The state auditor and the committee may review the comptroller's records of all tax refunds, credits, payments, warrants, offsets, checks, and settlements that occur following the effective date of this section. Notwithstanding any other law, in reviewing these tax refunds, credits, payments, warrants, offsets, checks, and settlements, the state auditor and the committee are entitled to access to related information to the same extent they would be entitled under Section 321.013 if the information were in a department or entity that is subject to audit. In accordance with Section 321.013(h), neither the state auditor nor the committee may conduct audits of private entities concerning the collection or remittance of taxes or fees to this state.

(c) Within six months following the effective date of this section, the comptroller shall provide to the state auditor information designated by the state auditor, after consultation with the comptroller, relating to tax refunds, credits, payments, warrants, offsets, checks, and settlements made in the past six years as requested by the state auditor. Commencing February 1, 2004, on a monthly basis, the comptroller shall provide to the state auditor information designated by the state auditor relating to tax refunds, credits, payments, warrants, offsets, checks, and



settlements to which this section applies.

(d) A review by the state auditor under this section is considered an audit for purposes of the application of Section 552.116, relating to confidentiality of audit working papers. Information obtained or possessed by the state auditor or the committee that is confidential under law when in the possession of the comptroller remains confidential while in the possession of the state auditor or committee, except as provided by Subsection (e).

(e) The committee shall determine the manner in which the state auditor shall report information obtained pursuant to Subsection (b). The report may include any information obtained during the review, except that the report may not be formatted in a manner or include any information that discloses or effectively discloses the specific identity of an individual or taxpayer. The report must state the information by category or by numeric pseudonym and may include other information maintained by the Texas Ethics Commission.

(f) Except as provided by Subsection (e), this section does not affect any other law relating to confidentiality of information relating to tax information, including Sections 111.006, 151.027, and 171.206, Tax Code.

(g) This section does not affect any other law relating to release of information for legislative purposes, including Section 552.008, Government Code.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 23.01, eff. Feb. 1, 2004.

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

(b) The written report must include comments about internal controls, compliance with state or federal laws, and recommendations for improving financial 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 submit each report to the

committee prior to publication. 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) each member 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.

(f) Each audited department or entity shall report on the manner in which the department or entity has addressed the findings and recommendations that are included in a report prepared by the state auditor under this section. The state auditor shall prescribe the form and schedule for a report by the department or entity under this subsection.

(g) If a department or entity does not agree with a recommendation contained in the state auditor's report, the department or entity shall file a report with the State Auditor and the persons specified by Subsection (c). The report must:

- (1) identify the recommendation with which the department or entity did not agree;
- (2) state the reason the department or entity did not agree with the recommendation; and
- (3) state whether the department or entity intends to implement the recommendation.

(h) Repealed by Acts 1989, 71st Leg., ch. 2, Sec. 9.02, eff. Aug. 28, 1989.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 2.09(a), eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 862, Sec. 7, eff. Aug. 31, 1987; Acts 1989, 71st Leg., ch. 2, Sec. 9.02, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 599, Sec. 30, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1122, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1499, Sec. 1.05, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 785, Sec. 5, eff. Sept. 1, 2003.

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, 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.

(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, 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.

(d) 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, the committee shall report the refusal to the legislature.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985. Amended

by Acts 1987, 70th Leg., ch. 862, Sec. 9, eff. Aug. 31, 1987.

Sec. 321.0161. GROSS MISMANAGEMENT; EXPANDING SCOPE OF AUDIT. If in the course of an audit of a state agency or institution the State Auditor finds evidence of gross mismanagement or grossly improper management oversight practices, the State Auditor, after consulting with the head of the agency or institution, shall as soon as is practicable expand the scope of the audit into other aspects of the operations of the agency or institution to determine whether similar problems exist elsewhere.

Added by Acts 2007, 80th Leg., R.S., Ch. 758 (H.B. [3290](#)), Sec. 1, eff. September 1, 2007.

Sec. 321.017. REVIEW AND OVERSIGHT OF FUNDS AND ACCOUNTS RECEIVING COURT COSTS. (a) The state auditor may review each fund and account into which money collected as a court cost is directed by law to be deposited to determine whether:

(1) the money is being used for the purpose or purposes for which the money is collected; and

(2) the amount of the court cost is appropriate, considering the purpose or purposes for which the cost is collected.

(b) The state auditor may perform reviews under this section as specified in the audit plan developed under Section [321.013](#).

(c) The state auditor shall make the findings of a review performed under this section available to the public and shall report the findings to the governor, the chief justice of the supreme court, the presiding judge of the court of criminal appeals, and the committee. The report may include the state auditor's recommendations for legislation or policy changes.

Added by Acts 2001, 77th Leg., ch. 952, Sec. 1, eff. Sept. 1, 2001.

Sec. 321.018. SUBPOENAS. (a) At the request of the State Auditor or on its own motion, the committee may subpoena witnesses or any books, records, or other documents reasonably necessary to conduct an examination under this chapter.

(b) Each subpoena must be signed by either of the joint

chairs of the committee or the secretary of the committee.

(c) On the request of either of the joint chairs of the committee or the secretary of the committee, the sergeant at arms or an assistant sergeant at arms of either house of the legislature or any peace officer shall serve the subpoena in the manner prescribed for service of a district court subpoena.

(d) If the person to whom a subpoena is directed fails to comply, the committee may bring suit in district court to enforce the subpoena. If the court determines that good cause exists for the issuance of the subpoena, the court shall order compliance. The court may modify the requirements of a subpoena that the court determines are unreasonable. Failure to comply with the order of the district court is punishable as contempt.

(e) The committee may provide for the compensation of subpoenaed witnesses. The amount of compensation may not exceed the amount paid to a witness subpoenaed by a district court in a civil proceeding.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 6.02, eff. Jan. 11, 2004.

Sec. 321.019. INTERFERENCE WITH AUDIT OR INVESTIGATION.

(a) An officer or employee of this state or of an entity subject to audit or investigation by the state auditor commits an offense if the officer or employee:

(1) refuses to immediately 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 other law, 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.

(b) An offense under this section is a Class A misdemeanor.

Acts 1985, 69th Leg., ch. 479, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 862, Sec. 10, eff. Aug. 31, 1987; Acts 1997, 75th Leg., ch. 1122, Sec. 5, eff. Sept. 1, 1997.

Sec. 321.020. COORDINATION OF CERTAIN AUDITS. (a) Notwithstanding any other law, a state agency, or a corporation that is dedicated to the benefit of a state agency and that meets the criteria specified by Section B, Article 2.23B, Texas Non-Profit Corporation Act (Article 1396-2.23B, Vernon's Texas Civil Statutes), may employ a private auditor to audit the state agency or corporation only if:

(1) the agency or corporation is authorized to contract with a private auditor through a delegation of authority from the state auditor;

(2) the scope of the proposed audit has been submitted to the state auditor for review and comment; and

(3) the services of the private auditor are procured through a competitive selection process in a manner allowed by law.

(b) At the joint direction of the lieutenant governor and the speaker of the house of representatives, the state auditor shall provide contract management services to the agency or corporation for an audit described by this section.

Added by Acts 1997, 75th Leg., ch. 1122, Sec. 6, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 1012 (H.B. 905), Sec. 1, eff. June 18, 2005.

Sec. 321.021. GIFTS AND GRANTS. (a) The legislative audit committee may accept gifts, grants, and donations from any organization described in Section 501(c)(3) of the Internal Revenue Code for the purpose of funding any activity under this chapter.

(b) All gifts, grants, and donations must be accepted in an open meeting by a majority of the voting members of the legislative audit committee and reported in the public record of the committee with the name of the donor and purpose of the gift, grant, or donation.

Added by Acts 1987, 70th Leg., ch. 617, Sec. 2, eff. Sept. 1, 1987.

Sec. 321.022. COORDINATION OF INVESTIGATIONS. (a) If the administrative head of a department or entity that is subject to

audit by the state auditor has reasonable cause to believe that money received from the state by the department or entity or by a client or contractor of the department or entity may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the department or entity, the administrative head shall report the reason and basis for the belief to the state auditor. The state auditor may investigate the report or may monitor any investigation conducted by the department or entity.

(b) The state auditor, in consultation with state agencies and institutions, shall prescribe the form, content, and timing of a report required by this section.

(c) All records of a communication by or to the state auditor relating to a report to the state auditor under Subsection (a) are audit working papers of the state auditor.

Added by Acts 1997, 75th Leg., ch. 1122, Sec. 7, eff. Sept. 1, 1997.

Sec. 321.023. SEAL. The state auditor shall obtain a seal with "State Auditor, State of Texas" engraved around the margin and a five-pointed star in the center to be used to authenticate official documents issued by the state auditor.

Added by Acts 1989, 71st Leg., ch. 584, Sec. 122, eff. Sept. 1, 1989.