

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

2ND CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1670

By: Nations of the House

and

Rabon of the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to cities and towns; amending 11 O.S. 2001, Sections 17-105, 17-105.1, 17-106.1, 17-107 and Section 1, Chapter 514, O.S.L. 2004 (11 O.S. Supp. 2004, Section 17-115), which relate to municipal finances; modifying municipal qualification for imposing certain requirement; adding financial disclosure procedures for certain municipalities; modifying certain terms; modifying reference to certain audit guide; adding entities authorized to use certain bidding procedures; amending 60 O.S. 2001, Sections 180.1, 180.2 and 180.3, which relate to public trusts; adding a population requirement for certain public trusts for audit applicability; adding financial disclosure requirements for certain public trusts; providing an exception; deleting certain certification requirement; modifying time requirement for the Oklahoma Accountancy Board to provide updates and changes to the State Auditor and Inspector; adding reference to certain annual audit; amending 74 O.S. 2001, Section 212A, which relates to audits of public entities; clarifying governmental entities subject to audit requirements; deleting certain filing requirement; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 11 O.S. 2001, Section 17-105, is amended to read as follows:

Section 17-105. A. The governing body of each municipality with an income of Twenty-five Thousand Dollars (\$25,000.00) or more to its general fund during a fiscal year shall cause to be prepared, by an independent licensed public accountant or a certified public accountant, an annual financial statement audit to be conducted in

accordance with ~~the generally accepted~~ auditing standards generally accepted in the United States of America and ~~the~~ "Government Auditing Standards" as issued by the Comptroller General of the United States. Such audit shall be ordered within thirty (30) days of the close of each fiscal year. Copies shall be filed with the State Auditor and Inspector within six (6) months after the close of the fiscal year in accordance with the provisions of Sections ~~24102~~ 3022 and ~~24103~~ 3023 of Title 68 of the Oklahoma Statutes and with the governing body of the municipality.

B. The governing body of each municipality with an income of Twenty-five Thousand Dollars (\$25,000.00) or more to its general fund during a fiscal year and with a population of less than two thousand five hundred (2,500) as of the most recent Federal Decennial Census, and for whom an annual financial statement audit is not required by another law, regulation or contract, shall cause to be prepared, by an independent licensed public accountant or a certified public accountant, an annual financial statement audit in accordance with auditing standards generally accepted in the United States and Government Auditing Standards as issued by the Comptroller General of the United States, or an agreed-upon-procedures engagement over certain financial information and compliance requirements to be performed in accordance with the applicable attestation standards of The American Institute of Certified Public Accountants, and the fieldwork and reporting standards in Government Auditing Standards. The specific procedures to be performed are as follows for the fiscal year:

1. Prepare a schedule of changes in fund balances for each fund and determine compliance with the statutory prohibition of creating fund balance deficits;

2. Prepare a budget and actual financial schedule for the General Fund and any other significant funds listing separately each federal fund and determine compliance with the legal level of

appropriations by comparing expenditures and encumbrances to authorized appropriations;

3. Agree material bank account balances to bank statements, and trace significant reconciling items to subsequent clearance;

4. Compare uninsured deposits to fair value of pledged collateral;

5. Compare use of material-restricted revenues and resources to their restrictions;

6. Determine compliance with requirements for separate funds; and

7. Determine compliance with reserve account and debt service coverage requirements of bond indentures.

Such audit or agreed-upon-procedures engagement shall be ordered within thirty (30) days of the close of each fiscal year. Copies shall be filed with the State Auditor and Inspector within six (6) months after the close of the fiscal year in accordance with the provisions of Sections 3022 and 3023 of Title 68 of the Oklahoma Statutes and with the governing body of the municipality.

SECTION 2. AMENDATORY 11 O.S. 2001, Section 17-105.1, is amended to read as follows:

Section 17-105.1 An auditor shall file with the State Auditor and Inspector, at the same time a certified copy of an audit or agreed-upon-procedures report is filed as required in Section 17-105 of ~~Title 11 of the Oklahoma Statutes~~ this title, two ~~(2)~~ copies of a ~~report~~ prescribed form setting forth for the fiscal year audited the funds available to the municipality and the use of those funds. The ~~report form~~ form shall also include information relating to the duly constituted authorities of the municipality and shall be on a form approved by the State Auditor and Inspector. Copies of said audit and the ~~report form~~ form shall be made available for public inspection by the municipality and the State Auditor and Inspector. The State

Auditor and Inspector may contract for the compilation and reporting of the information submitted on the ~~report~~ form.

SECTION 3. AMENDATORY 11 O.S. 2001, Section 17-106.1, is amended to read as follows:

Section 17-106.1 Independent auditor's reports relating to federal ~~financial assistance~~ awards compliance will be in a form consistent with the auditors' reports in "~~Audits of State and Local Governmental Units,~~" ~~which is~~ the most recent audit guide for state and local governments prepared by The American Institute of Certified Public Accountants ~~and recognized by "Government Auditing Standards" of the Comptroller General of the United States.~~ State agencies or other pass-through grantors of ~~Federal Financial Assistance~~ federal awards will not place auditing requirements on a municipality, in addition to the required reports and schedules of ~~Federal Financial Assistance~~ federal awards expended, without approval of the State Auditor and Inspector.

SECTION 4. AMENDATORY 11 O.S. 2001, Section 17-107, is amended to read as follows:

Section 17-107. If a municipality does not file a copy of its audit or agreed-upon-procedures report as provided in Section 17-105 of this title, the State Auditor and Inspector shall notify the Oklahoma Tax Commission which shall withhold from the municipality its monthly allocations of gasoline taxes until the audit report is filed. If a report is not filed within two (2) years after the close of the fiscal year, the funds being withheld shall be remitted by the Oklahoma Tax Commission to the county in which the incorporated city or town is located and deposited to the county highway fund of that county to be used as otherwise provided by law.

SECTION 5. AMENDATORY Section 1, Chapter 514, O.S.L. 2004 (11 O.S. Supp. 2004, Section 17-115), is amended to read as follows:

Section 17-115. A. A municipality or any public trust of which the municipality is beneficiary or any nonappropriated governmental agency or instrumentality of the state is authorized to use a reverse auction bidding procedure to obtain bids for the purchase of goods or services of any type of kind. The reverse auction shall be a real-time bidding process taking place at a previously scheduled time and Internet location and for a previously established duration, in which multiple suppliers, anonymous to each other, submit bids to provide the goods or services. The reverse auction procedure may be used as an alternative to any state law applicable to the purchase of the goods or services.

B. The procedure shall provide:

1. A bid opening and bid closure. At the opening date and time, the municipality or public trust shall begin accepting reverse auction electronic bids. Reverse auction bids shall be accepted until the bid closure, except as provided by paragraph 6 of this subsection, unless the municipality or public trust determines it is in the best interest of the municipality or public trust to extend the closing time and notifies the reverse auction bidders of the extended closing time by public announcement at the Internet location at least fifteen (15) minutes prior to the original closing time;

2. The posting of all reverse auction bids electronically and updating of bids on a real-time basis by the municipality or public trust;

3. The authorization for the municipality or public trust to require bidders to register before the opening date and time and, as part of that registration, require bidders to agree to any terms, conditions or other requirements of the solicitation or applicable acts;

4. The authorization for the municipality or public trust to also require potential bidders to prequalify as bidders and to

restrict solicitations to prequalified online and reverse auction bidders;

5. The retention of the authority of the municipality or public trust to determine the criteria that will be used as the basis for making awards; and

6. The authorization for the municipality or public trust to determine it is in the best interest of the municipality or public trust to allow it to accept an electronic bid after the specified official closing date and time, in the event the municipality or public trust determines that a significant error or event occurred that affected the electronic receipt of any reverse auction bid by the municipality or public trust.

C. All bids submitted electronically through the reverse auction bidding process pursuant to this section are subject to the same public disclosure laws that govern bids received pursuant to any other law of this state governing procurement procedures for a municipality or public trust.

D. All remedies available to the municipality or public trust and suppliers through a bid process pursuant to any other law of this state are also available to the municipality or public trust reverse auction bidders in a reverse auction bidding process.

SECTION 6. AMENDATORY 60 O.S. 2001, Section 180.1, is amended to read as follows:

Section 180.1 A. The trustees of every trust created for the benefit and furtherance of any public function with the State of Oklahoma or any county or municipality with a population of two thousand five hundred (2,500) or more as of the most recent Federal Decennial Census as the beneficiary or beneficiaries thereof must cause an audit to be made of, ~~including, but not limited to, the funds, accounts, and fiscal affairs of such trust~~ financial statements of the trust, such audit to be ordered within thirty (30) days of the close of each fiscal year of the trust. The audit shall

be filed in accordance with the requirements set forth for financial statement audits in Section 212A of Title 74 of the Oklahoma Statutes.

B. The trustees of a trust whose beneficiary or beneficiaries are municipalities with a population as of the most recent Federal Decennial Census of less than two thousand five hundred (2,500) and more than Fifty Thousand Dollars (\$50,000.00) in revenues, and for whom an annual financial statement audit is not required by another law, regulation, or contract, shall cause to be conducted, by an independent licensed public accountant or a certified public accountant, an annual audit of the trust's financial statements in accordance with auditing standards generally accepted in the United States and Government Auditing Standards as issued by the Comptroller General of the United States or an agreed-upon-procedures engagement over certain financial information and compliance requirements to be performed in accordance with the applicable attestation standards of The American Institute of Certified Public Accountants, and the fieldwork and reporting standards in Government Auditing Standards. The specific procedures to be performed are:

1. Prepare a schedule of revenues, expenditures/expenses and changes in fund balances/net assets for each fund and determine compliance with any applicable trust or other prohibitions for creating fund balance deficits;

2. Agree material bank account balances to bank statements, and trace significant reconciling items to subsequent clearance;

3. Compare uninsured deposits to fair value of pledged collateral;

4. Compare use of material-restricted revenues and resources to their restrictions;

5. Determine compliance with requirements for separate funds;
and

6. Determine compliance with reserve account and debt service coverage requirements of bond indentures.

Such engagement shall be ordered within thirty (30) days of the close of each fiscal year of the trust. Copies of the annual audit or agreed-upon-procedures report shall be filed with the State Auditor and Inspector within six (6) months after the close of the fiscal year and with the trustees and governing body of the beneficiaries.

C. Public trusts whose beneficiary or beneficiaries are municipalities with a population as of the most recent Federal Decennial Census of less than two thousand five hundred (2,500) which have less than Fifty Thousand Dollars (\$50,000.00) in assets, and for whom an annual financial statement audit is not required by another law, regulation, or contract may apply to the State Auditor and Inspector for a waiver of the requirements of subsections A and B of this section.

SECTION 7. AMENDATORY 60 O.S. 2001, Section 180.2, is amended to read as follows:

Section 180.2 (a) The audits herein required shall ~~be certified with~~ include the opinion of a certified public accountant or a licensed public accountant notwithstanding any lesser requirement by any instrument under which the trust may have covenanted for an audit to be made or furnished. ~~The required audit shall adhere to standards set by the State Auditor and Inspector.~~ One copy of the annual audit or agreed-upon-procedures report shall be filed with the State Auditor and Inspector, and, in the case of a trust wherein the state is the beneficiary, one copy with the Governor of the State of Oklahoma ~~and one copy with the legislative committee provided for in Section 178.1 of this title~~ and one copy with each beneficiary of the trust, not later than six (6) months following the close of each fiscal year of the trust.

(b) Within thirty (30) days after the effective date hereof, each trust mentioned in Section 180.1 of this title shall certify to the State Auditor and Inspector the date of the close of its fiscal year.

(c) In the event that copy of such audit or agreed-upon-procedures report as herein required shall not be filed with the State Auditor and Inspector within the time herein provided, the State Auditor and Inspector hereby is authorized to employ, at the cost and expense of the trust, a certified public accountant or licensed public accountant to make the audit or perform the agreed-upon-procedures report herein required.

(d) Prior to the delivery of and payment for any bonds, notes or other evidences of indebtedness by a public trust, there shall be filed with the Secretary of State an executed original or certified copy of the written instrument or will creating such public trust and a notice of said filing with the Secretary of State shall be delivered to the State Auditor and Inspector and, in the case of a trust wherein the state is the beneficiary, to the Attorney General.

SECTION 8. AMENDATORY 60 O.S. 2001, Section 180.3, is amended to read as follows:

Section 180.3 The necessary expense of ~~said~~ the audits and agreed-upon-procedures engagements, including the cost of typing, printing, and binding, shall be paid from funds of the trust.

SECTION 9. AMENDATORY 74 O.S. 2001, Section 212A, is amended to read as follows:

Section 212A. A. 1. ~~All~~ Except as otherwise provided by law, all government entities, as defined by the Governmental Accounting Standards Board, shall have an audit conducted in accordance with ~~generally-accepted~~ auditing standards generally accepted in the United States of America and Government Auditing Standards. Copies of any audit ~~performed~~, performance audit, agreed-upon-procedures report, or other attestation engagement report produced by a person

other than the State Auditor shall be filed with the State Auditor and Inspector by that person. The expense of the audit shall be paid by the government entity. For fiscal years ending after December 31, 1995, all government entities receiving public funds that are included in the reporting entity of the State of Oklahoma shall file a copy of the audit required by this paragraph with the Director of State Finance no later than four (4) months after the end of the fiscal year of the government entity. For purposes of this paragraph, the reporting entity of the State of Oklahoma includes all government entities included in the State of Oklahoma Comprehensive Annual Financial Report. The government entities included in the State of Oklahoma reporting entity shall be determined by the Director of State Finance using criteria set by the Governmental Accounting Standards Board.

2. Any public accountant or certified public accountant filing ~~a~~ an audit, performance audit, agreed-upon-procedures report or other attestation engagement report with the State Auditor and Inspector pursuant to this section shall be required to pay a filing fee of Forty Dollars (\$40.00) for the purposes of processing such reports and ensuring compliance with the provisions of this section. Such payments shall be deposited in the State Auditor and Inspector Revolving Fund, created pursuant to Section 227.9 of this title.

B. All registrants, as defined in the Oklahoma Accountancy Act, before entering into audit contracts required under this section, shall satisfy the Oklahoma Accountancy Board and the State Auditor and Inspector that such registrant meets Government Auditing Standards and has a current permit to practice issued by the Oklahoma Accountancy Board.

The State Auditor and Inspector shall receive annual reports from the Oklahoma Accountancy Board of all registrants meeting the requirements of this subsection. The Oklahoma Accountancy Board

shall provide changes and updates to the annual report to the State Auditor and Inspector ~~at least quarterly~~ upon request.

C. Schedules of federal ~~financial assistance~~ awards expended will be in a form consistent with the guidance in ~~"Audits of State and Local Governmental Units", which is~~ the most recent audit guide for state and local governments prepared by "The American Institute of Certified Public Accountants" ~~and recognized by Government Auditing Standards issued by the Comptroller General of the United States~~. State agencies or other pass-through grantors of ~~Federal Financial Assistance~~ federal awards expended will not place reporting requirements on a grantee or ~~sub-recipients~~ subrecipients in addition to the required federal compliance reports and schedules of ~~Federal Financial Assistance~~ federal awards expended, without approval of the State Auditor and Inspector.

D. All governmental entities shall report grant funds received, administered or used by the entity and all grant funds under the direct or indirect control of the governmental entity or any of its employees in their employment capacity. A copy of the report shall be filed with the State Auditor and Inspector and the Director of the Office of State Finance within four (4) months after the end of the fiscal year of the governmental entity. ~~The report shall follow standards established by the State Auditor and Inspector.~~ The State Auditor and Inspector may audit any funds reported. The cost of the audit shall be paid by the governmental entity unless the grant provides for the cost of audits from grant funds.

SECTION 10. This act shall become effective July 1, 2005.

SECTION 11. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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