

CONSENT CALENDAR
June 28, 2011

To: Honorable Mayor and Members of the City Council
From: Ann-Marie Hogan, City Auditor
Subject: State Audit Legislation

RECOMMENDATION

Adopt a Resolution stating that the following bills need amendment: SB 186 (Kehoe and DeSaulnier), SB 449 (Pavley), AB 187 (Lara and Smyth), AB 229 (Lara), and AB 253 (Smyth). The City’s position on these bills would be that they must be amended to address the concerns listed below. Request the City Manager send this resolution to the sponsors and co-sponsors of these bills, the League of California Cities, and the legislative offices of Senators Hancock and Corbett, Assembly Members Skinner, Buchanan, and Swanson, and staff of the Senate Government Operations Committee and Senate Government and Finance Committee, or other committees that may be considering these bills at the time of this action.

FISCAL IMPACTS OF RECOMMENDATION

There are minimal costs involved in sending letters. There could be significant future costs to the City, if these bills pass without amendment.

CURRENT SITUATION AND ITS EFFECTS

These five bills could authorize new State mandated costs for California local governments, including the City of Berkeley. They are currently being discussed and amended in Sacramento. SB 186, SB 449, and AB 229 authorize the elected State Controller to conduct audits of local governments or their auditors and, according to an analysis by the League of California Cities, to charge the local governments for the audit services. AB 187 gives that same authority to the appointed State Auditor. AB 187 was recently amended to add language about the State Auditor costs but, as of June 13, the League position is that it is not yet clearly stated in all of these bills that local governments will not be charged for the State’s audit services. AB 229 and AB 253 could impose new indirect costs on the City by raising costs for the annual CAFR and Single Audits performed by a public accounting firm, and by imposing new State mandates regarding how the City performs its accounting and auditing functions. See www.leginfo.ca.gov for: [SB 186](#); [SB 449](#); [AB 187](#); [AB 229](#); and [AB 253](#).

It should be noted that changes to each of the bills could be in place before the date of this Council meeting, since Berkeley’s Open Government Ordinance requires that Council items be published well in advance of meetings. The League of California Cities is also anticipating voting on its positions on these bills shortly. The City Auditor will provide updated information as needed.

BACKGROUND

The scandals in the City of Bell have inspired numerous legislative proposals to improve state fiscal monitoring and auditing of local governments. The League of California Cities identified a need to adopt specific Audit Principles to assist them in addressing these bills, and staff requested assistance from the City Auditor in developing these Audit Principles, which have now been adopted by the League. The League staff also asked the City Auditor to obtain comments from the independent performance audit community about some of the bills. These bills include SB 186 (Kehoe and DeSaulnier), 449 (Pavley), AB 187 (Lara and Smyth), AB 229 (Lara), and AB 253 (Smyth). (Source: www.leginfo.ca.gov)

1. SB 186 (Kehoe and DeSaulnier) authorizes the State Controller to perform audits of local agencies.
2. SB 186 (Kehoe and DeSaulnier) and SB 449 (Pavley) authorizes the State Controller to review local agency finances and audit local agency records.
3. AB 187 (Lara and Smyth) authorizes the State Auditor to establish a high-risk local agency audit program and audit to local agencies.
4. AB 229 (Lara) authorizes the State Controller to review and monitor audit reports performed by “independent auditors” and to prescribe an audit guide for these audits.
5. AB 253 (Smyth) establishes a Committee on City Accounting Procedures and requires the State Controller, in consultation with the Committee, to prescribe uniform accounting procedures to cities.

Published analysis indicates that 186 and 449 could authorize the Controller to charge the local agency (i.e., city) for the audits. The Controller is currently charging the Oakland Unified School District for such audit services, and an Assembly Bill challenging these charges is currently under consideration.

These bills should be amended to specifically prohibit charges to the local agencies, and to conform with the League of California Cities Audit Principles, and to address the following specific concerns:

1. **Unfunded Mandate: (SB 186, SB 449, AB 229)** The bills should be amended to clearly state that local governments will not be required to pay for the services for the State Controller or State Auditor nor to pay unreasonable costs for annual audit fees.
2. **Auditing Standards: (SB 186, SB 449, AB 187, and, possibly, AB 229)** The bills should require any audits of local agencies performed by the State Controller or the State Auditor to be conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) issued by the Controller General of the United States and the Government Accountability Office (GAO)

3. **Auditing Standards: (AB 229 and AB 253)** Since local governments and their auditors are already obliged to comply with federal standards, amend AB 229 to make the proposed California “audit guide” and the “uniform accounting procedures” voluntary guidance, rather than a new set of requirements.
Criteria for Selection for or Exemption from Audit: Require that criteria for selection of which local agencies to audit and how agencies get off the “high-risk” or audit-target list be spelled out more specifically in the legislation.
4. **Criteria to include in determining risk level or exemption from audits under these bills: (SB 186, SB 449, and AB 187)**
 - a. Excellent bond ratings.
 - b. Establishment by local statute/charter or enhancement of both an independent audit committee and a local independent performance audit function reporting to the independent audit committee, the legislative body, or to an elected auditor.
 - c. Other criteria such as those included in SB 449 and as may be suggested by knowledgeable parties.
5. **Define “Independent Auditors”:** Amend **AB 229** as shown in attached change tracked version of the bill, to make the language more consistent, which will clarify that oversight of the commercial accounting firms’ annual financial audits does not include oversight of performance audits by independent local auditors who are employees of their jurisdictions.
6. **Role of City Auditors:** Generally speaking, bills should be crafted to support establishment and improvement of independent local government audit committees and performance audit functions. City, county, and district auditors can help support the State’s interest in improving governance and performance of local governments. Such audit functions are required to follow GAGAS or IIA auditing standards, by California Government Code section 1236 and some City charters, including the Berkeley City Charter. Section 1236 already requires all local agencies with an aggregate spending of fifty million dollars or more annually to consider establishing an ongoing audit function in each agency. Whether agencies are aware of this requirement is unknown.

RATIONALE FOR RECOMMENDATION

The City of Berkeley, as well as other local agencies, will avoid the risk of incurring future costs because of the potential unintended consequences of these bills.

ALTERNATIVE ACTIONS CONSIDERED

The City could vote to “Oppose” these bills or to “Oppose Unless Amended.” Generally, when a position is taken to oppose unless amended, the expectation would be that the amended bill would be supported. Given legislative timing constraints, it would not be practical for the City to enter into negotiations with the authors of these bills with an aim of changing the City’s position to “Support.”

CONTACT PERSON

Ann-Marie Hogan, City Auditor, Office of the City Auditor, 981-6750

Attachments:

- 1: Resolution
- 2: League of California Cities Audit Principles (adopted 2011)
- 3: AB 229 (with previously suggested changes)
- 4: [SB 186](#) as of June 13, 2011
- 5: [SB 449](#) as of June 13, 2011
- 6: [AB 187](#) as of June 13, 2011
- 7: [AB 229](#) as of June 13, 2011
- 8: [AB 253](#) as of June 13, 2011

Supplemental Materials:

- 1: Links to legislative updates and history on all bills to be found at <http://www.leginfo.ca.gov>

RESOLUTION NO. ##,###-N.S.

AMENDMENTS NEEDED: SB 186, SB 449, AB 187, AB 229, AB 253

WHEREAS, the events in Bell, California have inspired numerous bills in the State Assembly and the State Senate aimed at preventing such abuses of authority in other local governments; and

WHEREAS, some of these bills contain language that, in the opinion of the City Auditor and representatives of other local government auditors and agencies, may trigger costly unintended consequences; and

WHEREAS, public confidence in government is maintained and strengthened when auditors perform their work with independence, objectivity, and integrity, and in accordance with nationally recognized professional auditing standards; and

WHEREAS, the League of California Cities, with assistance from the Berkeley City Auditor and the Association of Local Government Auditors (ALGA), has drafted an approved Audit Principles for use in considering legislation affecting audits; and

WHEREAS, the City Auditor and members of ALGA are available to advise in the process of amending these bills.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that SB 186, SB 449, AB 187, AB 229, and AB 253 should be amended rather than approved in their current form, as follows:

1. **Unfunded Mandate: (SB 186, SB 449, AB 229)** The bills should be amended to clearly state that local governments will not be required to pay for the services for the State Controller or State Auditor nor to pay unreasonable costs for annual audit fees.
2. **Auditing Standards: (SB 186, SB 449, AB 187, and, possibly, AB 229)** The bills should require any audits of local agencies performed by the State Controller or the State Auditor to be conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) issued by the Controller General of the United States and the Government Accountability Office (GAO)
3. **Auditing Standards: (AB 229 and AB 253)** Since local governments and their auditors are already obliged to comply with federal standards, amend AB 229 to make the proposed California “audit guide” and the “uniform accounting procedures” voluntary guidance, rather than a new set of requirements.
4. **Criteria for Selection for or Exemption from Audit:** Require that criteria for selection of which local agencies to audit and how agencies get off the “high-risk” or audit-target list be spelled out more specifically in the legislation.

5. **Criteria to include in determining risk level or exemption from audits under these bills: (SB 186, SB 449, and AB 187)**
 - a. Excellent bond ratings.
 - b. Establishment by local statute/charter or enhancement of both an independent audit committee and a local independent performance audit function reporting to the independent audit committee, the legislative body, or to an elected auditor.
 - c. Other criteria such as those included in SB 449 and as may be suggested by knowledgeable parties.
6. **Define “Independent Auditors”**: Amend **AB 229** as shown in change tracked version of the bill, to make the language more consistent, which will clarify that oversight of the commercial accounting firms’ annual financial audits does not include oversight of performance audits by independent local auditors who are employees of their jurisdictions.
7. **Role of City Auditors**: Generally speaking, bills should be crafted to support establishment and improvement of independent local government audit committees and performance audit functions. City, county, and district auditors can help support the State’s interest in improving governance and performance of local governments. Such audit functions are required to follow GAGAS or IIA auditing standards, by California Government Code section 1236 and some City charters, including the Berkeley City Charter. Section 1236 already requires all local agencies with an aggregate spending of fifty million dollars or more annually to consider establishing an ongoing audit function in each agency. Whether agencies are aware of this requirement is unknown.

BE IT FURTHER RESOLVED that this Resolution be communicated to the authors and co-authors of each bill, as well as the State Controller, State Auditor, League of California Cities, local State representatives, and staff of the legislative committees considering these bills at the time of passage of this Resolution.

League of California Cities: Audit Principles

Overarching Principles:

- Given the State already has substantial authority to examine local government financial practices, and recognizes the significant resources required by auditors and local governments to complete audits, additional authority should only be granted to a State agency when there are documented insufficiencies in its existing authority.
- Governmental financial audits and performance audits ensure financial integrity and promote efficient, effective and accountable local government.
- Transparent, accurate financial and performance information is necessary for citizens to have confidence that their interests are being served, and for decision makers to be accountable for ensuring that public funds are spent appropriately and effectively.
- Public trust is inspired when auditors perform their work with independence, objectivity and integrity, remaining free from personal, external and organizational impairments to that independence, both in fact and in appearance.
- Public confidence in government is maintained and strengthened when financial and performance information is collected, managed and reported in accordance with nationally recognized professional accounting and auditing standards.

Specific Guidelines:

- Local governments should follow Generally Accepted Accounting Principles (GAAP) for state and local governments established by the Governmental Accounting Standards Board (GASB). Financial audits should be conducted in accordance with Generally Accepted Auditing Standards (GAAS), issued by the American Institute of CPAs (AICPA); financial and performance audits should be conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) (“the Yellow Book”), issued by the Comptroller General of the United States.
- The need for additional State oversight is minimized when local government financial accounting and auditing are consistent with these standards. Within these standards, local governments may design financial management and reporting systems that are flexible enough to meet unique local needs and requirements.
- State investigation, review, or audit of local agencies should be undertaken only after the State meets clear and convincing criteria, such as documented evidence of material weaknesses in financial controls. Any oversight conducted should not duplicate reviews already required or completed, such as the federal Single Audit, which was instituted to avoid duplicative audit work by federal and State agencies.
- When State oversight is warranted, it should be coordinated by one State agency to be efficient and minimize disruption. That agency should conduct all audits in full compliance with Government Audit Standards and should consult with appropriate stakeholders and local government audit organizations.

CITY OF OAKLAND



CITY HALL • ONE FRANK H. OGAWA PLAZA, 4TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Auditor
Courtney A. Ruby, CPA
City Auditor

(510) 238-3378
FAX (510) 238-7640
TDD (510) 238-3254
www.oaklandauditor.com

April 20, 2011

California State Controller's Office
John Chiang
P.O. Box 942850
Sacramento, California 94250-5872

RE: SUGGESTED CHANGES FOR CLARIFICATION TO ASSEMBLY BILL 229

Dear Controller Chiang,

First, we would like to express our appreciation for your commitment to increasing fiscal and performance oversight in California's cities. As independently elected city auditors, we believe that government auditing is critical to accountability and good governance.

After carefully reviewing Assembly Bill 229 (as amended on March 30, 2011), we respectfully offer a select number of technical changes that would greatly enhance this proposed legislation by providing increased clarity to certain sections of the bill.

Please find these suggested changes below (in *italics* and ~~striketrough~~):

12410.6. (a) The Controller shall develop a plan to review and report on *the annual financial audit reports and compliance audits of local agencies, including those reports prepared in compliance with the federal Single Audit Act of 1984 for local agencies.* The Controller, in consultation with the Department of Finance, and representatives of the League of California Cities, the California State Association of County Auditors, and the California Society of Certified Public Accountants, shall propose the content of, and adopt, an audit guide.

12410.7. (a) The Controller on an annual basis shall review and monitor the *annual financial audit, including those reports prepared in compliance with the federal Single Audit Act of 1984* ~~reports performed by independent auditors~~. The Controller shall determine whether the audit reports conform with the reporting provisions of government auditing standards and the audit guide and shall notify each local agency, and the auditor of each local agency regarding each determination.

12410.9. (a) The Controller may perform quality control reviews of audit working papers *of the annual financial audit reports, including those reports prepared in compliance with the federal Single Audit Act of 1984*, to determine whether audits are performed in conformity with government audit standards and the local agency audit guide. The Controller shall communicate the results of his or her reviews to the Department of Finance, the independent auditor, and the local agency for which the audit was performed, and shall review his or her findings with the independent auditor.

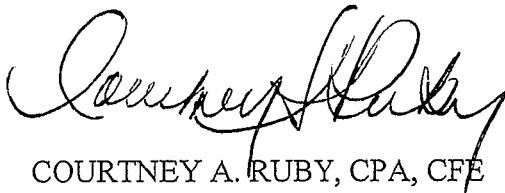
By implementing the aforementioned changes, the bill will benefit from the following enhancements:

- (a) Ensuring that the audit type to which this legislation is directed, as defined in Section 12410.5 (a), is reflected throughout the legislation, thus preventing any misinterpretation; and
- (b) Distinguishing between (1) performance audits performed by independent city auditor offices in cities, such as Oakland and Berkeley, and (2) the annual financial statement audits or single audits performed by commercial public accounting firms under contract to the cities.

As members of the Association of Local Government Auditors (ALGA), we encourage you to visit our website at www.governmentauditors.org or to contact us at ahogan@cityofberkeley.info or cruby@oaklandnet.com for more information about city auditors and independent audit committees.

Please do not hesitate to contact either of us if you have any questions.

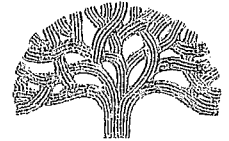
Sincerely,



COURTNEY A. RUBY, CPA, CFE
Oakland City Auditor



ANN-MARIE HOGAN
Berkeley City Auditor



CITY HALL • ONE FRANK H. OGAWA PLAZA, 4TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Auditor
Courtney A. Ruby, CPA
City Auditor

(510) 238-3378
FAX (510) 238-7640
TDD (510) 238-3254
www.oaklandauditor.com

April 20, 2011

Office of Assemblymember Ricardo Lara
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0050

RE: SUGGESTED CHANGES FOR CLARIFICATION TO ASSEMBLY BILL 229

Dear Assemblymember Lara,

First, we would like to express our appreciation for your commitment to increasing fiscal and performance oversight in California's cities. As independently elected city auditors, we believe that government auditing is critical to accountability and good governance.

After carefully reviewing your Assembly Bill 229 (as amended on March 30, 2011), we respectfully offer a select number of technical changes that would greatly enhance this proposed legislation by providing increased clarity to certain sections of the bill.

Please find these suggested changes below (in *italics* and ~~striketrough~~):

12410.6. (a) The Controller shall develop a plan to review and report on *the annual financial audit reports and compliance audits of local agencies, including those reports prepared in compliance with the federal Single Audit Act of 1984 for local agencies.* The Controller, in consultation with the Department of Finance, and representatives of the League of California Cities, the California State Association of County Auditors, and the California Society of Certified Public Accountants, shall propose the content of, and adopt, an audit guide.

12410.7. (a) The Controller on an annual basis shall review and monitor the *annual financial audit, including those reports prepared in compliance with the federal Single Audit Act of 1984* ~~reports performed by independent auditors~~. The Controller shall determine whether the audit reports conform with the reporting provisions of government auditing standards and the audit guide and shall notify each local agency, and the auditor of each local agency regarding each determination.

12410.9. (a) The Controller may perform quality control reviews of audit working papers *of the annual financial audit reports, including those reports prepared in compliance with the federal Single Audit Act of 1984*, to determine whether audits are performed in conformity with government audit standards and the local agency audit guide. The Controller shall communicate the results of his or her reviews to the Department of Finance, the independent auditor, and the local agency for which the audit was performed, and shall review his or her findings with the independent auditor.


By implementing the aforementioned changes, the bill will benefit from the following enhancements:

- (a) Ensuring that the audit type to which this legislation is directed, as defined in Section 12410.5 (a), is reflected throughout the legislation, thus preventing any misinterpretation; and
- (b) Distinguishing between (1) performance audits performed by independent city auditor offices in cities, such as Oakland and Berkeley, and (2) the annual financial statement audits or single audits performed by commercial public accounting firms under contract to the cities.

As members of the Association of Local Government Auditors (ALGA), we encourage you to visit our website at www.governmentauditors.org or to contact us at ahogan@cityofberkeley.info or cruby@oaklandnet.com for more information about city auditors and independent audit committees.

Please do not hesitate to contact either of us if you have any questions.

Sincerely,


COURTNEY A. RUBY, CPA, CFE
Oakland City Auditor


ANN-MARIE HOGAN
Berkeley City Auditor

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE APRIL 6, 2011

AMENDED IN SENATE MARCH 22, 2011

AMENDED IN SENATE MARCH 10, 2011

SENATE BILL

No. 186

Introduced by Senators Kehoe and DeSaulnier
(Principal coauthor: Assembly Member Alejo)
(Coauthor: Assembly Member Lara)

February 7, 2011

An act to amend, *repeal, and add* Section 12464 of the Government Code, relating to the Controller.

LEGISLATIVE COUNSEL'S DIGEST

SB 186, as amended, Kehoe. The Controller.

Existing law ~~authorizes the Controller~~ *provides that if the county, city, or district reports are not made in a specified manner, or there is reason to believe that the report is false, the Controller is required to appoint a qualified accountant to make an investigation and to obtain the information required for the annual report of financial transactions. Existing law provides that if a similar investigation is made of any county, city, or district for 2 successive years, then a copy of the results of those investigations shall be transmitted to the grand jury of the county investigated or in which the local agency investigated is situated.*

This bill would *expand the above provisions to also include a special district, joint powers authority, or redevelopment agency. This bill would also, until January 1, 2017, authorize the Controller to exercise discretionary authority to perform an audit or investigation of any county, city, special district, joint powers authority, or redevelopment*

agency, if the Controller has reason to believe, supported by documentation, that the local agency is not complying with the financial requirements in state law, grant agreements, local charters, or local ordinances. This bill would require, *until January 1, 2017*, the Controller to prepare a report of the results of the audit or investigation and to file a copy with the local legislative body.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12464 of the Government Code is
2 amended to read:
3 12464. (a) If the county, city, special district, joint powers
4 authority, or redevelopment agency reports are not made in the
5 time, form, and manner required or there is reason to believe that
6 a report is false, incomplete, or incorrect, the Controller shall
7 appoint a qualified accountant to make an investigation and to
8 obtain the information required. The accountant appointed shall
9 report to the Controller the results of the investigation, and a copy
10 shall be filed with the legislative body of the county, city, special
11 district, joint powers authority, or redevelopment agency, the
12 accounts of which were investigated. If a similar investigation has
13 to be made of the accounts of any county, city, special district,
14 joint powers authority, or redevelopment agency, for two
15 successive years, a certified copy of the results of the investigation
16 last made shall be transmitted to the grand jury of the county that
17 was investigated or in which the local agency investigated is
18 situated, or, if the agency is situated in more than one county, in
19 the county in which any portion of the agency is situated.
20 (b) (1) If the Controller has reason to believe that any county,
21 city, special district, joint powers authority, or redevelopment
22 agency is not complying with the financial requirements in state
23 law, local charters, or local ordinances, he or she may perform an
24 audit or investigation of the issue. The basis for the decision to
25 conduct an audit or investigation shall be supported by credible
26 documentation, including input from the local agency, *as well as*
27 *a determination by the Controller that sufficient funds are made*
28 *available to conduct the audit or investigation.* The Controller
29 shall prepare a report of the results of the audit or investigation

1 that shall include documentation used as the basis for the decision
2 to perform the audit or investigation. A copy of the report shall be
3 filed with the legislative body of the county, city, special district,
4 joint powers authority, or redevelopment agency, subject to the
5 audit or investigation. Any finding of illegal acts or fraud shall be
6 communicated to the appropriate authorities, including the county
7 grand jury.

8 (2) For purposes of this subdivision, documentation means any
9 handwriting, typewriting, printing, photostating, photographing,
10 photocopying, transmitting by electronic mail or facsimile, and
11 every other means of recording upon any tangible thing any form
12 of communication or representation, including letters, words,
13 pictures, sounds, or symbols, or combinations thereof, and any
14 record thereby created, regardless of the manner in which the
15 record has been stored.

16 (c) Any costs incurred by the Controller pursuant to ~~subdivision~~
17 ~~(a)~~ subdivisions (a) and (b), including contracts with, or
18 employment of, certified public accountants or public accountants,
19 in compiling a financial report pursuant to Section 12463 or
20 12463.3 of this code, or as required by Section 33684 of the Health
21 and Safety Code, shall be borne by the county, city, special district,
22 joint powers authority, or redevelopment agency, and shall be a
23 charge against any unencumbered funds of the county, city, special
24 district, joint powers authority, or redevelopment agency. Any
25 forfeiture imposed by Section 53895 or 53895.5 may be offset up
26 to the total costs incurred by the Controller. Any remaining balance
27 shall be forfeited in accordance with Sections 53895 and 53895.5.
28 Any costs incurred by the Controller in excess of the forfeiture
29 imposed shall be a charge against any unencumbered funds of the
30 county, city, special district, joint powers authority, or
31 redevelopment agency.

32 (d) *This section shall remain in effect only until January 1, 2017,*
33 *and as of that date is repealed, unless a later enacted statute, that*
34 *is enacted before January 1, 2017, deletes or extends that date.*

35 SEC. 2. Section 12464 is added to the Government Code, to
36 read:

37 12464. (a) *If the county, city, special district, joint powers*
38 *authority, or redevelopment agency reports are not made in the*
39 *time, form, and manner required or there is reason to believe that*
40 *a report is false, incomplete, or incorrect, the Controller shall*

1 *appoint a qualified accountant to make an investigation and to*
2 *obtain the information required. The accountant appointed shall*
3 *report to the Controller the results of the investigation, and a copy*
4 *shall be filed with the legislative body of the county, city, special*
5 *district, joint powers authority, or redevelopment agency, the*
6 *accounts of which were investigated. If a similar investigation has*
7 *to be made of the accounts of any county, city, special district,*
8 *joint powers authority, or redevelopment agency, for two successive*
9 *years, a certified copy of the results of the investigation last made*
10 *shall be transmitted to the grand jury of the county that was*
11 *investigated or in which the local agency investigated is situated,*
12 *or, if the agency is situated in more than one county, in the county*
13 *in which any portion of the agency is situated.*

14 *(b) Any costs incurred by the Controller pursuant to subdivision*
15 *(a), including contracts with, or employment of, certified public*
16 *accountants or public accountants, in compiling a financial report*
17 *pursuant to Section 12463 or 12463.3 of this code, or as required*
18 *by Section 33684 of the Health and Safety Code, shall be borne*
19 *by the county, city, special district, joint powers authority, or*
20 *redevelopment agency, and shall be a charge against any*
21 *unencumbered funds of the county, city, special district, joint*
22 *powers authority, or redevelopment agency. Any forfeiture imposed*
23 *by Section 53895 or 53895.5 may be offset up to the total costs*
24 *incurred by the Controller. Any remaining balance shall be*
25 *forfeited in accordance with Sections 53895 and 53895.5. Any*
26 *costs incurred by the Controller in excess of the forfeiture imposed*
27 *shall be a charge against any unencumbered funds of the county,*
28 *city, special district, joint powers authority, or redevelopment*
29 *agency.*

30 *(c) This section shall become operative on January 1, 2017.*

AMENDED IN SENATE MAY 19, 2011
AMENDED IN SENATE MAY 17, 2011
AMENDED IN SENATE APRIL 26, 2011
AMENDED IN SENATE APRIL 25, 2011
AMENDED IN SENATE APRIL 7, 2011
AMENDED IN SENATE MARCH 30, 2011

SENATE BILL

No. 449

Introduced by Senator Pavley

February 16, 2011

An act to add and repeal Article 6 (commencing with Section 12485) of Chapter 5 of Part 2 of Division 3 of Title 2 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

SB 449, as amended, Pavley. Controller: local agency financial review.

Existing law requires certain local agencies to furnish reports to the Controller concerning financial transactions of the local agency, subject to uniform accounting and reporting procedures prescribed by the Controller. The Controller may provide for the investigation of certain local agency finances if a report is not made in the time, form, and manner required or there is reason to believe that a report is false, incomplete, or incorrect.

This bill would additionally authorize the Controller, *if the Controller determines that sufficient funds are made available*, to conduct a preliminary review to determine the existence of a local agency financial

problem, and perform an audit upon completion of that review, subject to specified criteria.

The bill would require the Controller, *if the controller determines that sufficient funds are made available*, to convene a local agency financial review committee with a specified membership, and authorize the committee to recommend a financial recovery plan for a local agency requesting assistance. It would require the Controller to report to the Legislature annually on the actions of the committee and the status of all engagements with local agencies pursuant to these provisions.

The bill would specify that its provisions would be repealed on January 1, 2017.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds all of the following:

2 (1) The economic recession has disproportionately affected
3 California and, in particular, the local agencies that deliver vital
4 services to the public. Many local agencies have been forced to
5 take unprecedented steps to avert financial crisis and maintain a
6 sound credit rating.

7 (2) The State of California has a vital financial interest in the
8 solvency of its local agencies. When insolvency occurs at a local
9 agency, the municipal credit in the state can be negatively
10 impacted, costing the state and local governments millions of
11 dollars, making borrowing more difficult, and hindering the state's
12 economic recovery.

13 (3) The health and welfare of the citizens of the state would be
14 adversely affected by the insolvency of local agencies. Therefore,
15 the fiscal health of local agencies is vitally necessary to the interests
16 of this state in providing necessary governmental services.

17 (b) Accordingly, the Legislature declares that it is a valid public
18 purpose for the state to assist a local agency in a fiscal emergency
19 to avert or manage financial problems as defined in this act, and
20 that the authority and powers conferred by this act constitute a
21 necessary program and serve a valid public purpose.

22 SEC. 2. Article 6 (commencing with Section 12485) is added
23 to Chapter 5 of Part 2 of Division 3 of Title 2 of the Government
24 Code, to read:

1 Article 6. Local Agency Financial Review and Assistance

2
3 12485. (a) The Controller may conduct a preliminary review
4 to determine the existence of a local agency financial problem if
5 *the Controller determines that sufficient funds are made available*
6 *to conduct the preliminary review and one of the following occur*
7 *occurs:*

8 (1) (A) The governing body, chief administrative officer, or
9 chief executive of a local agency requests a preliminary review
10 under this section. The request shall be in writing and shall identify
11 the existing fiscal conditions that make the request necessary.

12 (B) If the local agency requests a review, any costs incurred
13 pursuant to this paragraph shall be borne by the local agency.

14 (2) (A) The Controller receives a written request from a creditor
15 with an undisputed claim against the local agency that exceeds the
16 greater of ten thousand dollars (\$10,000) or 1 percent of the annual
17 general fund budget of the local agency, and that remains unpaid
18 six months after its due date, provided that no less than 30 days
19 prior to submitting the request, the creditor notifies the local agency
20 in writing of his or her intention to submit the request.

21 (B) For purposes of this subdivision, a claim shall be deemed
22 undisputed unless the local agency has made a determination that
23 any of the following conditions are present:

24 (i) There is a discrepancy between the invoice or claimed amount
25 and the provisions of the contract or grant.

26 (ii) There is a discrepancy between the invoice or claimed
27 amount and either the claimant's actual delivery of property or
28 services to the local agency or the local agency's acceptance of
29 that delivery or deliveries.

30 (iii) Additional evidence supporting the validity of the invoice
31 or claimed amount is required to be provided to the local agency
32 by the claimant.

33 (iv) The invoice has been improperly executed or needs to be
34 corrected by the claimant.

35 (v) There is a discrepancy between the refund or other payment
36 due as calculated by the person to whom the money is owed and
37 by the local agency.

38 (3) The Controller receives notification from the trustee, actuary,
39 or at least 10 percent of the beneficiaries of a local agency pension
40 fund alleging that the local agency has not timely deposited its

1 minimum obligation payment to the pension fund as required by
2 law.

3 (4) The Controller receives notification from a trustee, paying
4 agent, or bondholder of a default in a bond payment, or a violation
5 of one or more bond covenants, by a local agency.

6 (b) The Controller may conduct a preliminary review to
7 determine the existence of a local agency financial problem if *the*
8 *Controller determines that sufficient funds are made available to*
9 *conduct the preliminary review and* two or more of the following
10 occur:

11 (1) The Controller receives notification that employees of the
12 local agency have not been paid and it has been at least seven days
13 after the scheduled date of payment.

14 (2) The Controller receives notification that the local agency is
15 delinquent in the distribution of tax revenues as required by law.

16 (3) The Controller receives notification that a local agency has
17 implemented retirements and layoffs constituting greater than 20
18 percent of the local agency's workforce, relative to the prior year
19 budget.

20 (4) The Controller receives notification that a local agency has
21 reduced its ~~police~~ *public safety* or fire services funding by more
22 than 50 percent, relative to the prior year budget.

23 (c) The Controller may conduct a preliminary review to
24 determine the existence of a local agency financial problem if *the*
25 *Controller determines that sufficient funds are made available to*
26 *conduct the preliminary review and* three or more of the following
27 occur:

28 (1) The Controller receives notification that the local agency
29 has a critical cashflow situation, evidenced by a midyear borrowing
30 not anticipated in the most recently enacted budget.

31 (2) The Controller receives notification that a local agency has
32 enacted a midyear budget correction *exceeding 20 percent of the*
33 *enacted budget*.

34 (3) The Controller receives notification that a local agency has
35 had a decline in year-over-year general fund collections of greater
36 than 15 percent.

37 (4) The Controller receives notification that a local agency has
38 had deficits in one or more major restricted funds, defined as
39 providing greater than 10 percent of the local agency's annual total
40 budget, for a period exceeding a fiscal year.

1 (5) The local agency fails to provide an annual financial report
2 or audit that conforms with the minimum procedures and standards
3 of the Controller as required by law.

4 (d) In conducting a preliminary review pursuant to this section,
5 the Controller shall provide the local agency written notification
6 of the review, and shall meet with the local agency officials to
7 receive, discuss, and consider information provided by the local
8 agency concerning the agency's financial condition.

9 (e) The Controller shall provide written notification to the
10 Governor and the Legislature within 120 days after beginning a
11 preliminary review pursuant to this section, ~~when if~~ the review has
12 determined that one or more conditions indicative of a serious
13 ~~financial problem may exist within the local agency.~~ *financial*
14 *problem, as described in Section 12486, exist within the local*
15 *agency.*

16 (f) When conducting a preliminary review, the Controller shall
17 give priority consideration to preliminary reviews conducted
18 pursuant to subdivision (a) over subdivisions (b) and (c). The
19 Controller shall further give priority consideration to preliminary
20 reviews conducted pursuant to subdivision (b) over subdivision
21 (c).

22 12486. (a) The Controller may conduct an audit of the local
23 agency for purposes of determining if *the controller determines*
24 *that sufficient funds are made available to conduct the preliminary*
25 *review and* one or more of the following conditions indicative of
26 a serious financial problem have occurred, or are likely to occur,
27 if remedial action is not taken:

28 (1) A default in the payment of principal or interest upon bonded
29 indebtedness for which no funds, or insufficient funds, are on hand
30 and segregated in a special trust fund.

31 (2) Failure for a period of 30 days or more beyond the due date
32 to transfer one or more of the following to the appropriate agency:

33 (A) Taxes withheld on the income of employees.

34 (B) Taxes collected by the local agency as agent for another
35 governmental entity or taxing authority.

36 (C) Any contribution required by a pension, retirement, or
37 benefit plan.

38 (3) Failure for a period of 30 days or more to pay wages and
39 salaries or other compensation or benefits owed to local agency
40 employees or retirees.

1 (4) The total amount of accounts payable for the current fiscal
2 year, as determined by the financial records of the local agency,
3 is in excess of 10 percent of the total expenditures of the local
4 agency in that fiscal year.

5 (5) Failure to eliminate an existing deficit in any fund of the
6 local agency within the two-year period preceding the end of the
7 local agency's fiscal year for which a preliminary review was
8 conducted pursuant to Section 12485.

9 (6) Projection of a deficit in the general fund of the local agency
10 for the current fiscal year in excess of 10 percent of the budgeted
11 revenues for the general fund.

12 (b) (1) The governing body, chief administrative officer, or
13 chief executive of a local agency may request an audit under this
14 section. The request shall be in writing and shall identify the
15 existing fiscal conditions that make the request necessary.

16 (2) If the local agency requests a review, any costs incurred
17 pursuant to this section shall be borne by the local agency.

18 (c) The local agency shall make its books and records available
19 to the Controller for this purpose.

20 (d) In conducting an audit pursuant to this section, the Controller
21 shall provide the local agency written notification of the audit, and
22 shall meet with the local agency officials to receive, discuss, and
23 consider information provided by the local agency concerning the
24 agency's financial condition.

25 (e) The Controller shall give priority consideration to conducting
26 an audit of local agencies that meet the conditions pursuant to this
27 section, over local agencies that only meet the conditions for a
28 preliminary review pursuant to Section 12485.

29 (f) If an audit conducted pursuant to this section finds that one
30 or more conditions indicative of a serious financial problem may
31 exist within a local agency, the Controller shall provide written
32 notification to the Governor and the Legislature within 120 days
33 after beginning that audit.

34 12487. (a) ~~The Controller~~ *If the Controller determines that*
35 *sufficient funds are made available, the controller* shall convene
36 a local agency financial review committee to provide assistance
37 to local agencies that seek help in averting or managing a financial
38 problem. The committee shall meet no less than annually.
39 Assistance provided pursuant to this section shall not include direct

1 financial payments or loans to local agencies that are not otherwise
2 authorized by statute.

3 (b) The committee shall be chaired by the Controller and include
4 representatives of the office of the Treasurer and the Department
5 of Finance.

6 (c) The Controller shall utilize the services of a consultant
7 having extensive financial management and accounting experience
8 with local agencies in the state, to assist in evaluating and assisting
9 local agencies that are undergoing or facing a financial problem.

10 (d) A local agency may request assistance from the committee
11 in meeting the ordinary needs of government operations. The
12 request shall identify the existing financial conditions that make
13 the request necessary.

14 (e) A local agency that is subject to a preliminary review
15 pursuant to Section 12485, or an audit pursuant to Section 12486,
16 shall receive priority consideration by the local agency financial
17 review committee.

18 (f) In consultation with the local agency requesting assistance,
19 and using any applicable data from a preliminary review or audit
20 conducted pursuant to this article if a preliminary review or audit
21 has occurred, the committee shall recommend a financial recovery
22 plan for the local agency. The financial recovery plan shall consider
23 both of the following:

24 (1) Conducting the operations of the local agency within the
25 resources available according to the data provided by the local
26 agency.

27 (2) The payment in full of the scheduled debt service
28 requirements on all bonded and other indebtedness and other
29 uncontested legal obligations of the local agency.

30 (g) The Controller shall report to the Legislature, no later than
31 June 30, 2012, and annually thereafter, on the actions of the
32 committee and status of all engagements with local agencies
33 pursuant to this section.

34 12488. For purposes of this article, “local agency” means a
35 city, county, city and county, special district, or redevelopment
36 agency.

1 12489. This article shall remain in effect only until January 1,
2 2017, and as of that date is repealed, unless a later enacted statute,
3 that is enacted before January 1, 2017, deletes or extends that date.

O

AMENDED IN ASSEMBLY MAY 27, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL**No. 187**

**Introduced by Assembly Members Lara and Smyth
(Principal coauthor: Assembly Member Alejo)**January 25, 2011

An act to add Section 8546.10 to the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 187, as amended, Lara. State Auditor: audits: high-risk local government agency audit program.

Existing law authorizes the State Auditor to establish a high-risk government agency audit program for the purpose of identifying, auditing, and issuing reports on any agency of the state that the State Auditor identifies as being at high risk for the potential of waste, fraud, abuse, and mismanagement or that has major challenges associated with its economy, efficiency, or effectiveness.

This bill would authorize the State Auditor to establish a high-risk local government agency audit program to identify, audit, and issue reports on any local government agency, including any city, county, or special district, or any publicly created entity that the State Auditor identifies as being at high risk for the potential of waste, fraud, abuse, or mismanagement or that has major challenges associated with its economy, efficiency, or effectiveness. The bill would also authorize the State Auditor to consult with the State Controller, Attorney General, and other state agencies in identifying local government agencies that are at high risk.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8546.10 is added to the Government
 2 Code, to read:
 3 8546.10. (a) The State Auditor may establish a high risk local
 4 government agency audit program for the purpose of identifying,
 5 auditing, and issuing reports on any local government agency,
 6 including, but not limited to, any city, county, special district, or
 7 any publicly created entity, whether created by the California
 8 Constitution or otherwise, that the State Auditor identifies as being
 9 at high risk for the potential of waste, fraud, abuse, or
 10 mismanagement or that has major challenges associated with its
 11 economy, efficiency, or effectiveness.
 12 (b) In addition to identifying a local government agency as high
 13 risk on the basis of weaknesses identified in audit and investigative
 14 reports produced by the bureau, the State Auditor may consult
 15 with the Controller, Attorney General, and other state agencies
 16 that have oversight responsibilities over any local government
 17 agency, in identifying local governments that are at high risk.
 18 (c) *The Bureau of State Audits shall be responsible for the costs*
 19 *associated with the high-risk local government agency audit*
 20 *program, shall conduct the program as funds permit, and shall*
 21 *only conduct the program to the extent that it does not interfere*
 22 *with duties related to mandated audits and requests from the Joint*
 23 *Legislative Audit Committee.*
 24 ~~(e)~~
 25 (d) (1) The State Auditor shall notify the Joint Legislative Audit
 26 Committee whenever it identifies a local government as at high
 27 risk.
 28 (2) *The State Auditor shall notify the Joint Legislative Audit*
 29 *Committee at the start of any audit conducted pursuant to the*
 30 *high-risk local government agency audit program.*
 31 (3) *The State Auditor shall provide the Joint Legislative Audit*
 32 *Committee, at a public hearing of the committee, an annual update*
 33 *of all audits in progress.*
 34 (4) *If a local government agency has taken significant corrective*
 35 *measures for deficiencies identified by the State Auditor, that*

1 *agency shall be removed from the high-risk local government*
2 *agency audit program.*

3 ~~(d)~~

4 (e) Notwithstanding the requirements of Section 10231.5, if the
5 State Auditor establishes the program provided for in this section
6 and the State Auditor determines that a local agency is at high risk,
7 the State Auditor shall issue audit reports at least once every two
8 years with recommendations for improvement in such a local
9 government so identified.

O

AMENDED IN ASSEMBLY APRIL 14, 2011

AMENDED IN ASSEMBLY APRIL 13, 2011

AMENDED IN ASSEMBLY MARCH 30, 2011

AMENDED IN ASSEMBLY MARCH 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL**No. 229****Introduced by Assembly Member Lara**

February 2, 2011

An act to amend Section 12410.5 of, to add Sections 12410.6, 12410.7, and 12410.9 to, and to add and repeal Section 12410.8 of, the Government Code, relating to audits.

LEGISLATIVE COUNSEL'S DIGEST

AB 229, as amended, Lara. Controller: audits.

Existing law requires the Controller to superintend the fiscal concerns of the state. Existing law requires the Controller to receive every audit report prepared by any local agency to comply with the federal Single Audit Act of 1984.

This bill would require the audit reports prepared in this regard to be submitted to the Controller within 9 months of the end of the period audited or in accordance with applicable federal law. This bill would authorize the Controller to appoint a qualified certified public accountant to complete an audit report if it is not submitted by the local agency within the required timeframe, with associated costs to be borne by the local agency, as specified. This bill would require the audit to comply with the Government Auditing Standards issued by the Comptroller General of the United States. This bill would require the audits to be

made by a certified public accountant that is licensed by the California Board of Accountancy and selected by a local agency from a directory of accountants to be published by the Controller by December 31 of each year. The Controller would be required to use specified criteria to determine those certified public accountants that are to be included in the directory.

This bill would require the Controller to develop a plan to review and report the financial and compliance audits of local agencies, and to review and monitor the audit reports performed by independent auditors, according to specified criteria. This bill would require the Controller, in consultation with specified entities, to propose and adopt the content of an audit guide. This bill would also require the Controller to report to the Legislature by January 31 of each year the results of the Controller’s oversight activity. The requirement that the Controller report to the Legislature would be repealed on December 31, 2015.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds that financial audits provide
2 an independent assessment of, and reasonable assurance about,
3 whether local agencies’ reported financial condition, results, and
4 use of resources are presented fairly in accordance with recognized
5 standards. Accordingly, it is the intent of the Legislature to promote
6 accountability over local government funding by establishing a
7 process for reviewing and reporting on financial and compliance
8 audits conducted of local agencies. It is further the intent of the
9 Legislature that the Controller shall have oversight responsibilities
10 for implementing and ensuring compliance with this act.

11 SEC. 2. Section 12410.5 of the Government Code is amended
12 to read:

13 12410.5. (a) The Controller shall receive every annual financial
14 audit report prepared for any local agency, as defined in Section
15 53890, including those reports prepared in compliance with the
16 federal Single Audit Act of 1984 (P.L. 98-502; 31 U.S.C. Sec.
17 7501 et seq.) and required under any law to be submitted to any
18 state agency, and shall, after ascertaining its compliance with that
19 federal act, transmit the report to the designated state agency.

1 (b) An audit for any local agency submitted to the Controller
2 pursuant to this section shall comply with the Government Auditing
3 Standards issued by the Comptroller General of the United States.

4 (c) An audit for any local agency submitted to the Controller
5 pursuant to this section shall be made by a certified public
6 accountant, licensed by the California Board of Accountancy, and
7 selected by the local agency, as applicable, from a directory of
8 certified public accountants maintained by the Controller which
9 shall be published by the Controller not later than December 31
10 of each year.

11 (1) In determining which certified public accountants shall be
12 included in the directory, the Controller shall use the following
13 criteria:

14 (A) The certified public accountants or public accountants shall
15 be in good standing as certified by the California Board of
16 Accountancy.

17 (B) The certified public accountants or public accountants, as
18 a result of a quality control review conducted by the Controller
19 pursuant to Section 12410.9, shall not have been found to have
20 conducted an audit in a manner constituting noncompliance with
21 subdivision (b) of this section and subdivision (a) of Section
22 12410.7, and the Controller referred the matter to the California
23 Board of Accountancy for consideration of disciplinary action
24 pursuant to subdivision (d) of Section 12410.9. In that instance, if
25 the certified public accountant or public accountant had been
26 included in the directory, the certified public ~~accountant's~~
27 *accountant* or public accountant shall be removed from the
28 directory until such time as the board makes a determination on
29 the matter. If the board suspends, or revokes, the certified public
30 accountant or public accountant's license, or prohibits the licensee
31 from performing audits of local agencies, the certified public
32 accountant or public accountant shall be excluded from the
33 directory until such time as he or she is in good standing with the
34 board.

35 (2) Commencing with the 2011–12 fiscal year, it shall be
36 unlawful for a public accounting firm to provide audit services to
37 a local agency if the lead audit partner, or coordinating audit
38 partner, having primary responsibility for the audit, or the audit
39 partner responsible for reviewing the audit, has performed audit
40 services for that local agency in each of the six previous fiscal

1 years. The Controller may waive this requirement if he or she finds
2 that no otherwise eligible auditor is available to perform the audit.

3 (d) The governing board of each local agency shall include all
4 of the following in its contracts for audits:

5 (1) A provision to withhold 10 percent of the audit fee until the
6 Controller certifies that the audit report conforms to the reporting
7 provisions of subdivision (a) of Section 12410.7.

8 (2) A provision to withhold 50 percent of the audit fee for any
9 subsequent year of a multiyear contract if the prior year's audit
10 report was not certified as conforming to the reporting provisions
11 of subdivision (a) of Section 12410.7. This provision shall include
12 a statement that a multiyear contract shall be null and void if a
13 public accounting firm or independent auditor is declared ineligible
14 pursuant to subdivision (d) of Section 12410.9. The amount
15 withheld shall not be payable unless payment is ordered by the
16 board or the audit report for that subsequent year is certified by
17 the Controller as conforming to the reporting provisions of
18 subdivision (a) of Section 12410.7.

19 (3) A provision that will provide the Controller access to audit
20 working papers.

21 SEC. 3. Section 12410.6 is added to the Government Code, to
22 read:

23 12410.6. (a) The Controller shall develop a plan to review and
24 report on financial and compliance audits of local agencies. The
25 Controller, in consultation with the Department of Finance, and
26 representatives of the League of California Cities, the California
27 State Association of County Auditors, and the California Society
28 of Certified Public Accountants, shall propose the content of, and
29 adopt, an audit guide.

30 (b) The audit reports shall be submitted to the Controller within
31 nine months after the end of the period audited, or in accordance
32 with applicable federal law.

33 (c) If the audit reports required by Section 12410.5 have not
34 been submitted by a local agency to the Controller on or before
35 the due date established by this section, the Controller may appoint
36 a qualified certified public accountant to complete the report and
37 to obtain the information required. Any cost incurred by the
38 Controller pursuant to this subdivision, including contracts with,
39 or the employment of, the certified public accountants in

1 completing the audit shall be borne by the local agency and shall
2 be a charge against any unencumbered funds of the local agency.

3 SEC. 4. Section 12410.7 is added to the Government Code, to
4 read:

5 12410.7. (a) The Controller on an annual basis shall review
6 and monitor the audit reports performed by independent auditors.
7 The Controller shall determine whether the audit reports conform
8 with the reporting provisions of government auditing standards
9 and the audit guide and shall notify each local agency, and the
10 auditor of each local agency regarding each determination.

11 (b) The independent auditor shall correct his or her audit report
12 within 30 days of notification of any deficiency. The Controller
13 may suspend the independent auditor from performing any local
14 agency audits if the auditor does not correct his or her audit report
15 within 30 days of the Controller's notification.

16 (c) (1) Within 30 days from the date of receipt of written
17 notification that the Controller refuses to certify an audit report as
18 conforming to the reporting provisions described in subdivision
19 (a), an independent auditor or audit firm having a portion of an
20 audit fee withheld pursuant to paragraph (1) or (2) of subdivision
21 (d) of Section 12410.5 may file an appeal in writing with the
22 California Board of Accountancy.

23 (2) The board shall complete an investigation of the appeal
24 within 90 days of the filing of the appeal and, on the basis of the
25 investigation, do one of the following:

26 (A) (i) Order the Controller to provide notification that the audit
27 report conforms to the reporting provisions described in subdivision
28 (a).

29 (ii) If the board orders the Controller to provide notification that
30 the audit report conforms to the reporting provisions described in
31 subdivision (a), the Controller shall notify the contracting local
32 agency, which shall then release the portion of the audit fee being
33 withheld in accordance with paragraph (1) or (2) of subdivision
34 (d) of Section 12410.5.

35 (B) Schedule the appeal for a hearing, in which case the final
36 action on the appeal shall be completed by the board within one
37 year from the date of the filing of the appeal.

38 SEC. 5. Section 12410.8 is added to the Government Code, to
39 read:

1 12410.8. (a) The Controller shall report to the Legislature by
2 January 31 of each year the results of the Controller's oversight
3 activity, including the results of the Controller's quality control
4 reviews.

5 (b) A report submitted pursuant to subdivision (a) shall be
6 submitted in compliance with Section 9795.

7 (c) Pursuant to Section 10231.5, this section is repealed on
8 December 31, 2015.

9 SEC. 6. Section 12410.9 is added to the Government Code, to
10 read:

11 12410.9. (a) The Controller may perform quality control
12 reviews of audit working papers to determine whether audits are
13 performed in conformity with government audit standards and the
14 local agency audit guide. The Controller shall communicate the
15 results of his or her reviews to the Department of Finance, the
16 independent auditor, and the local agency for which the audit was
17 performed, and shall review his or her findings with the
18 independent auditor.

19 (b) Prior to the performance of any quality control reviews, the
20 Controller shall develop and publish guidelines and standards for
21 those reviews. Pursuant to the development of those guidelines
22 and standards for those reviews, the Controller shall provide an
23 opportunity for public comment. The Controller shall update the
24 guidelines and standards for any changes in audit standards.

25 (c) The Controller is responsible for selecting audits for review
26 based on criteria, including, but not limited to, disciplinary actions
27 by the California Board of Accountancy, results of the Controller's
28 review and monitoring of the audit reports, the extent of findings
29 in the audit reports issued by the independent auditor, the number
30 of audits of local agencies performed annually by the independent
31 auditor, the independent auditor's experience in performing audits
32 of local agencies, the complexity of state and federal programs
33 administered by the local agencies, and requests or leads from
34 other sources.

35 (d) If the Controller finds that the audit was conducted in a
36 manner that constitutes unprofessional conduct as defined pursuant
37 to Section 5100 of the Business and Professions Code, or that there
38 were multiple and repeated failures to disclose noncompliant acts,
39 the Controller shall refer the case to the California Board of
40 Accountancy. In that instance, the independent auditor shall be

1 prohibited from performing an audit *of a local agency* until such
2 time as the board resolves the matter. If the California Board of
3 Accountancy finds that the independent auditor conducted an audit
4 in an unprofessional manner, the Controller may prohibit the
5 independent auditor from performing any audit of a local agency
6 for the period during which the independent auditor is not in good
7 standing with the board, in addition to any other penalties that the
8 California Board of Accountancy may impose.

O

AMENDED IN ASSEMBLY APRIL 14, 2011

AMENDED IN ASSEMBLY MARCH 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 253

Introduced by Assembly Member Smyth
(Coauthors: Assembly Members Jeffries, Norby, and Portantino)
(Coauthor: Senator Correa)

February 3, 2011

An act to amend ~~Section 53891~~ *Section 52891 and 53892.2* of, and to add Sections 53891.2 and 53891.3 to, the Government Code, relating to local agencies.

LEGISLATIVE COUNSEL'S DIGEST

AB 253, as amended, Smyth. Local agencies: accounting.

Existing law requires the Controller to prescribe uniform accounting and reporting procedures that are applicable to specified types of local agencies, including special districts.

This bill would instead require the Controller to prescribe uniform accounting procedures that are applicable only to specified types of special districts, subject to these provisions. The bill would require the Controller to prescribe uniform accounting procedures for cities, subject to specified criteria, in collaboration with the Committee on City Accounting Procedures, which would be created by the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 53891 of the Government Code is
2 amended to read:

3 53891. The officer of each local agency who has charge of the
4 financial records shall furnish to the Controller a report of all the
5 financial transactions of the local agency during the next preceding
6 fiscal year. The report shall be furnished within 90 days after the
7 close of each fiscal year and shall be in the form required by the
8 Controller. If the report is filed in electronic format as prescribed
9 by the Controller, the report shall be furnished within 110 days
10 after the close of each fiscal year. However, in the case of local
11 agencies filing annual financial materials with the California Health
12 Facilities Commission or any successor thereto pursuant to Section
13 441.18 of the Health and Safety Code, the audited report shall be
14 furnished within 120 days after the close of each fiscal year.
15 Further, in the case of community redevelopment agencies filing
16 annual reports with the Controller pursuant to Section 33080 of
17 the Health and Safety Code, the report shall be furnished within
18 six months of the end of the agency's fiscal year.

19 The Controller shall prescribe uniform accounting procedures
20 which shall be applicable to all special districts, as defined in
21 Section 12463, except for special districts which substantially
22 follow a system of accounting prescribed by the Public Utilities
23 Commission of the State of California or the ~~Federal Power~~
24 ~~Commission~~ *Federal Energy Regulatory Commission*. The
25 procedures shall be adopted under the provisions of Chapter 3.5
26 (commencing with Section 11340) of Part 1 of Division 3 of Title
27 2. The Controller shall prescribe these procedures only after
28 consultation with and approval of a local governmental advisory
29 committee established pursuant to Section 12463.1. Approval of
30 the procedures shall be by majority vote of the members present
31 at a meeting of the committee called by the chairperson thereof.

32 SEC. 2. Section 53891.2 is added to the Government Code, to
33 read:

34 53891.2. The Controller shall, in collaboration with the
35 Committee on City Accounting Procedures created pursuant to
36 Section 53891.3, prescribe for cities uniform accounting and
37 reporting procedures conforming to the generally accepted
38 accounting principles. The procedures shall be adopted under the

1 provisions of Chapter 3.5 (commencing with Section 11340) of
2 Part 1 of Division 3 of Title 2 and shall be published in the
3 California Code of Regulations either in their entirety or by
4 reference.

5 SEC. 3. Section 53891.3 is added to the Government Code, to
6 read:

7 53891.3. The Committee on City Accounting Procedures is
8 hereby created and shall consist of 10 members appointed by, and
9 who shall serve at the pleasure of, the Controller. Five of the
10 members shall be city finance officers, three of the members shall
11 be city managers, ~~and two of the members shall be city council~~
12 ~~members, subject to the approval of their respective jurisdictions.~~
13 *one of the members shall be a public auditor, and one of the*
14 *members shall be an individual with a demonstrated history of*
15 *professional experience analyzing local government financial data*
16 *produced by the Controller.* The members of the committee shall
17 serve without compensation, but shall be reimbursed for their
18 necessary traveling and other expenses incurred in attending
19 meetings of the committee. These expenses shall be paid by the
20 city of which the member is an officer. The Controller shall
21 designate a member of the committee to serve as chairperson. The
22 committee shall meet at the call of the chairperson and each
23 member shall be given written notice of a meeting at least 10
24 calendar days prior to the date of the meeting. *The committee may*
25 *discuss topics that include, but are not limited to, financial*
26 *transaction reports.*

27 SEC. 4. Section 53892.2 of the Government Code is amended
28 to read:

29 53892.2. Pursuant to Section 53892, the report shall also
30 contain the following information:

31 (a) For all issues of general obligation bonds, revenue bonds,
32 improvement district bonds, limited obligation bonds, and special
33 assessment bonds state:

- 34 (1) The purpose of the bonds.
35 (2) The amount of issued and unmatured bonds.
36 (3) The amount of any delinquent principal and interest
37 payments which are due upon issued and matured bonds.
38 (4) The amount of authorized but unissued bonds.

39 (b) For each issue of general obligation bonds and improvement
40 district bonds where the revenues of any revenue-producing

1 enterprise have been pledged as additional security for such bonds,
2 state the nature and extent of such pledge.

3 (c) For each issue of revenue bonds where any income, other
4 than the revenues of the enterprise financed by said revenue bonds,
5 has been pledged as additional security for said bonds, state the
6 nature and extent of such pledge.

7 (d) For each issue of improvement district bonds state the
8 assessed valuation of all taxable property in such improvement
9 district, determined in the manner provided in subdivision (e) of
10 Section 53892.

11 (e) For each issue of limited obligation bonds, state the nature
12 and source of taxes from which principal and interest is payable.

13 (f) For special assessment bonds which are payable, directly or
14 indirectly, from any source other than special assessments, state
15 the nature and extent of such sources.

16 (g) For all lease-obligations state:

17 (1) The purpose of the lease-obligation.

18 (2) The nature of the lease-obligation, whether by lease, contract,
19 or otherwise, and the parties thereto.

20 (3) The person, partnership, corporation, legal entity or
21 governmental agency providing any moneys expended for making
22 any acquisition or improvement authorized or required for the
23 purpose of such lease-obligation.

24 (4) The total future rentals or other payments which would be
25 required if the local agency completed the unexpired term of the
26 lease-obligation.

27 (h) For construction financed by the United States or the State
28 of California pursuant to a contract with, or a loan or grant to, the
29 local agency:

30 (1) The date or purpose of the contract or grant.

31 (2) The maximum repayment obligation under the contract, and
32 the amount expended by the United States or the State of California
33 to date.

34 (3) The estimated payment schedule.

35 (4) The payments to date and delinquencies, if any.

36 The following definitions shall apply to this section:

37 “Bonds” means all bonds, warrants, notes or other evidences of
38 indebtedness or liability for which the reporting local agency is
39 liable for payment of principal and interest thereon.

1 “General obligation bonds” means bonds payable, both principal
2 and interest, from the proceeds of ad valorem taxes or ad valorem
3 assessments which may be levied within the entire territory of the
4 local agency, without limitation as to rate or amount, upon all
5 property subject to taxation or assessment.

6 “Revenue bonds” means bonds issued by a local agency payable,
7 both principal and interest, from the revenues of a
8 revenue-producing enterprise.

9 “Improvement district bonds” means bonds payable, both
10 principal and interest, from the proceeds of ad valorem taxes or
11 ad valorem assessments which may be levied within a fixed and
12 defined portion or portions of the local agency, without limitation
13 as to rate or amount, upon all property subject to taxation or
14 assessment.

15 “Limited obligation bonds” means any bonds payable, both
16 principal and interest, from any taxes, other than taxes or
17 assessments levied upon property.

18 “Special assessment bonds” means any bonds issued to represent
19 unpaid assessments upon lands in an area fixed and defined by the
20 local agency, the lands within such area being specially benefited
21 by and assessed or to be assessed to pay the costs and expenses of
22 a public acquisition or improvement.

23 “Lease-obligations” means (i) leases for a term or more than 10
24 years under which the local agency is the lessee and has the right,
25 by option or otherwise, to acquire ownership of the property leased
26 or (ii) contracts whereby a local agency is obligated to make
27 installment payments for a period of more than 10 years for an
28 acquisition or improvement, such payments being made from a
29 special fund, provided, that revenue bonds or any contract,
30 indenture, resolution or ordinance providing for the issuance of
31 revenue bonds shall not be deemed a lease-obligation.

32 The information required by this section shall be submitted in
33 such form and detail as may be prescribed by the uniform reporting
34 procedures adopted pursuant to Section ~~53894~~ 53891.2.