

1 HB229
2 188428-1
3 By Representative Beckman
4 RFD: State Government
5 First Read: 16-JAN-18

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8 SYNOPSIS: Under existing law, the State Auditor is
9 responsible for making an annual report to the
10 Governor showing audited receipts and disbursements
11 of government and giving the results of other
12 audits performed by the Office of the State
13 Auditor. Annually, the State Auditor reports in
14 writing all missing items of state property valued
15 at more than \$500.

16 Under existing law, the property manager of
17 each agency or department of the state is
18 responsible for preparing an inventory of all
19 property of the agency or department valued at \$500
20 or more.

21 Under existing law, the Inventory Control
22 Division of the Office of the State Auditor
23 conducts an audit of the inventory of each agency
24 or department.

25 Under existing law, the Attorney General may
26 institute an action on behalf of the state to
27 recover the value of any personal property of any

1 agency or department lost to the state due to
2 neglect or willful act of the person having custody
3 of the property.

4 This bill would establish a procedure by
5 which the State Auditor could make a written demand
6 and, when necessary, initiate legal action for the
7 recovery of any amounts of public funds improperly
8 withheld, misappropriated, or otherwise illegally
9 expended and for the recovery of the value of any
10 public property disposed of in an unlawful manner
11 by a public officer or employee of any public body,
12 department, or agency of government.

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14 A BILL
15 TO BE ENTITLED
16 AN ACT

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18 Relating to the State Auditor; to amend Section
19 36-16-1 of the Code of Alabama 1975, to further provide for
20 the duties of the State Auditor; and to establish a process by
21 which the auditor would make written demand for recovery of
22 public funds improperly withheld or expended and for the value
23 of property disposed of in an unlawful manner and to authorize
24 the State Auditor to initiate legal action to recover such
25 funds or value of property.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 36-16-1 of the Code of Alabama
2 1975, is amended to read as follows:

3 "§36-16-1.

4 "The sole powers, functions, and duties of the State
5 Auditor shall be ~~as follows~~ all of the following:

6 "(1) Those enumerated in the constitution~~;~~.

7 "(2) The keeping of a seal with the devise, "The
8 State of Alabama, Auditor's Office~~;~~."

9 "(3) If the Treasurer, in the event of his or her
10 resignation or removal, fails to comply with the provisions of
11 this code, or if he or she dies or absconds, the stating of
12 his or her account in the presence of any person attending on
13 the part of such late Treasurer and the delivering of the
14 books, papers, and moneys belonging to the Treasury to his or
15 her successor, taking his or her receipt for the same, and
16 recording and filing ~~such~~ the receipts and statement and
17 reporting the same to the next Legislature~~;~~.

18 "(4) The postauditing of the accounts and records of
19 the Department of Finance and the Treasurer~~;~~.

20 "(5) The serving on the boards and commissions of
21 which he is by law an ex officio member~~;~~and.

22 "(6) Making a written demand or initiating legal
23 action, when necessary, for the recovery of any amounts
24 representing public funds the State Auditor finds to be
25 improperly withheld, misappropriated, or otherwise illegally
26 expended by an officer or employee of a public body,
27 department, or agency of government subject to audit pursuant

1 to this chapter, and for the recovery of the value of any
2 public property disposed of in an unlawful manner by a public
3 officer or employee of any public body, department, or agency
4 of government subject to audit pursuant to this chapter.

5 "~~(6)~~ (7) The making of a full and complete report to
6 the Governor at the close of each fiscal year showing the
7 audited receipts and disbursements of the government for the
8 last completed fiscal year, as required by the constitution
9 and as shown by the records and documents in the office of the
10 Department of Finance, which records shall be audited by ~~him~~
11 the State Auditor. The report shall also include the results
12 of his or her audit of all taxes and revenues collected and
13 paid into the Treasury and shall give the results of all other
14 audits made by ~~him~~ the State Auditor. The report shall be
15 printed and bound with, and as a part of, the annual financial
16 report of the state prepared by the Department of Finance. The
17 State Auditor shall make reports oftener upon, and matters
18 pertaining to, ~~his~~ the office if required by the Governor or
19 the Legislature."

20 Section 2. (a) If the State Auditor determines, as a
21 result of an audit or inventory conducted by his or her office
22 pursuant to Chapter 16 of Title 36 of the Code of Alabama
23 1975, that any amounts representing public funds are
24 improperly withheld, misappropriated, or otherwise illegally
25 expended by an officer or employee of any public body,
26 department, or agency of government subject to audit pursuant
27 to Chapter 16 of Title 36 or that public property has been

1 disposed of in an unlawful manner by a public officer or
2 employee of any public body, department, or agency of
3 government subject to audit pursuant to Chapter 16 of Title
4 36, the State Auditor shall make a written demand to the
5 person or persons liable for such amounts and upon the surety
6 on the official bond thereof, and, if applicable, to any
7 individual, partnership, corporation, or association to whom
8 the illegal expenditure was made or with whom the unlawful
9 disposition of public property was made, if such individual,
10 partnership, corporation, or association knew or had reason to
11 know through the exercising of reasonable diligence that the
12 expenditure was illegal or the disposition unlawful.

13 (b) A demand made pursuant to subsection (a) shall
14 be premised on competent evidence, which shall include at
15 least one of the following:

16 (1) A sworn statement or statements.

17 (2) Written documentation.

18 (3) Physical evidence.

19 (4) Reports and findings of government or other law
20 enforcement agencies.

21 (c) A demand letter issued pursuant to this section
22 shall remain confidential until the individual against whom
23 the demand letter is being filed has been served with a copy
24 of the demand letter. If the individual cannot be notified
25 within 15 days using reasonable means and due diligence, the
26 notification shall be made to the individual's bonding
27 company, if he or she is bonded. All moneys recovered shall be

1 paid into the State Treasury, and may be disbursed to the
2 appropriate department or agency in the amount demanded within
3 30 days from the date thereof, together with interest thereon
4 in the sum of one percent per month from the date the amount
5 or amounts were improperly withheld, misappropriated, or
6 otherwise illegally expended.

7 (d) In the event that the person or persons or the
8 surety refuses, neglects, or otherwise fails to pay the amount
9 demanded and the interest due thereon within the allotted 30
10 days, the State Auditor may initiate legal action in the
11 Circuit Court of Montgomery County to recover the total due
12 from the person or persons and surety on official bond named
13 therein. When requested by the State Auditor, the Attorney
14 General shall provide assistance in prosecuting the case. The
15 amounts so recovered shall be paid into the State Treasury. In
16 any case where written demand is issued to a surety on the
17 official bond of such person or persons and the surety
18 refuses, neglects, or otherwise fails within 120 days to
19 either pay the amount demanded and the interest due thereon or
20 to give the State Auditor a written response with specific
21 reasons for nonpayment, then the surety shall be subject to a
22 civil penalty in an amount of 12 percent of the bond, not to
23 exceed ten thousand dollars (\$10,000), to be deposited into
24 the State General Fund.

25 Section 3. (a) If any state department or agency
26 refuses or fails to make any inventory or supplemental
27 inventory required by Chapter 16 of Title 36, Code of Alabama

1 1975, or to do so in the manner prescribed by the State
2 Auditor, the State Auditor shall proceed to make, or cause to
3 be made, the inventory or supplemental inventory; and the
4 expense thereof shall be personally borne by the property
5 manager, and the property manager shall be responsible on his
6 or her official bond for the payment of the expense.

7 (b) In the event that an examination conducted
8 pursuant to Section 36-16-8, Code of Alabama 1975, finds items
9 that are included on the inventory of a department or agency
10 which are missing and otherwise unaccounted for, the State
11 Auditor may proceed under the provisions of Section 2 to
12 recover the value of the missing items. The demand shall be
13 made against the head of the agency, the agency's property
14 manager, and any other appropriate officer or employee, if
15 identified.

16 Section 4. This act shall become effective on the
17 first day of the third month following its passage and
18 approval by the Governor, or its otherwise becoming law.