SB274

MALC11W-1

By Senators Jones, Gudger, Givhan, Melson, Shelnutt, Stutts

RFD: Fiscal Responsibility and Economic Development

First Read: 02-Apr-24

SYNOPSIS:

Under existing law, the State Auditor is an elected position in the executive branch responsible for monitoring the accounts and records of the Department of Finance and the State Treasurer and maintaining property records of all state-owned, nonconsumable property.

This bill would require property managers of state agencies to report loss or theft of certain state property in certain circumstances.

This bill would create a new Division of Investigations within the Office of the State Auditor to investigate the loss, theft, or damage of certain state property and to demand repayment for the value of lost, stolen, or damaged property due to an act of negligence.

This bill would authorize the Attorney General to bring civil actions for cases of negligent loss or damage of state property.

This bill would authorize the State Auditor to refer to the Attorney General or an applicable district attorney any matter where there is a reasonable belief that a criminal violation has occurred.

This bill would also make nonsubstantive, technical revisions to update the existing code

language to current style.

A BILL

TO BE ENTITLED

AN ACT

Relating to the State Auditor; to amend Sections 36-16-1, 36-16-3, 36-16-6, 36-16-8, 36-16-10, and 36-16-11 of the Code of Alabama 1975; to add Section 36-16-1.1 to the Code of Alabama 1975; to provide further for the duties and authorities of the State Auditor; to create a Division of Investigations within the Office of the State Auditor and authorize the division to carry out certain investigations and make referrals to the Attorney General or district attorneys; to authorize the Attorney General to bring civil actions to recover amounts in certain circumstances; to update the code to reflect changes in practices and powers granted to the State Auditor; and to make nonsubstantive, technical revisions to update the existing code language to current style.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 36-16-1, 36-16-3, 36-16-6, 36-16-8, 36-16-10, and 36-16-11, Code of Alabama 1975, are amended to read as follows:

"§36-16-1

(a) The ~~sole powers, functions and~~ duties of the State Auditor shall ~~be as follows~~include all of the following:

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

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

(3) ~~If the Treasurer, in the event of his resignation or removal, fails to comply with the provisions of this code, or if he dies or absconds, the stating of his account in the presence of any person attending on the part of such late Treasurer and the delivering of the books, papers and moneys belonging to the Treasury to his successor, taking his receipt for the same, and recording and filing such receipts and statement and reporting the same to the next Legislature;~~ In the event the State Treasurer resigns or is removed from office, fails to comply with this code, or dies or leaves office for any reason, to deliver the books, papers, and monies belonging to the State Treasurer to his or her successor, record and file any receipts and statements relating to the transfer, and submit a comprehensive report on the transfer to the Legislature during the next legislative session.

~~(4) The postauditing of the accounts and records of the Department of Finance and the Treasurer;~~

~~(5)~~ (4) ~~The serving~~ To serve on the boards and commissions of which he or she is by law an ex officio member~~;~~ ~~and~~.

~~(6) The making of a full and complete report to the Governor at the close of each fiscal year showing the audited receipts and disbursements of the government for the last completed fiscal year, as required by the constitution and as shown by the records and documents in the office of the~~

~~Department of Finance, which records shall be audited by him. The report shall also include the results of his audit of all taxes and revenues collected and paid into the Treasury and shall give the results of all other audits made by him. The report shall be printed and bound with, and as a part of, the annual financial report of the state prepared by the Department of Finance. The Auditor shall make reports oftener upon, and matters pertaining to, his office if required by the Governor or the Legislature.~~

(b) Notwithstanding any law to the contrary, the Office of the State Auditor may do any of the following:

(1) No more frequently than once every two calendar years, adjust the threshold value of state property that must be inventoried pursuant to this chapter to reflect the cumulative change in the Consumer Price Index, as published by the United States Department of Labor, rounded to the nearest five dollars ($5). The State Auditor shall notify property managers described in Section 36-16-8 of the adjusted threshold value at least 90 days prior to the effective date of the adjusted threshold value.

(2) Investigate loss or damage to state property as further provided in Section 36-16-1.1."

"§36-16-3

The State Auditor may employ a ~~chief clerk~~chief of staff, whose employment shall be at the pleasure of the State Auditor. Subject to the provisions of the Merit System, ~~he~~ the chief of staff may employ principal accountants, account clerks, and ~~senior stenographers~~other clerical staff."

"§36-16-6

The official acts of the ~~chief clerk~~ chief of staff shall be presumed to be by the authority of, and shall be taken as done by, the State Auditor, who shall be responsible for the same."

"§36-16-8

(a) As used in this section, "threshold value" means a value of five hundred dollars ($500) or the threshold amount adjusted by the State Auditor pursuant to Section 36-16-1(b)(1).

(b) The Property Inventory Control Division shall establish a control in the following manner of all nonconsumable state personal property not exempt under Section 36-16-11~~.~~:

(1) The head of each department or agency of the state shall designate one of its employees as property manager for the department or agency. Except for books, the property manager shall make a full and complete inventory of all nonconsumable personal property and certain other items of personal property deemed sufficiently important or sensitive ~~enough~~ by the Property Inventory Control Division to be included in the inventory of state property ~~of the value of five hundred dollars ($500) or more~~ that meets or exceeds the threshold value owned by the state and used or acquired by the department or agency. The inventory shall show the complete description, manufacturer's serial number, cost price, date of purchase, location, ~~and~~ custodial agency, responsible officer~~,~~ or employee, and the state property control marking. A copy of

the inventory shall be submitted to the Property Inventory Control Division on October 1 and April 1 of each year for small agencies with read-only access to Asset Works or similar electronic reporting system used by the Office of the State Auditor. Each inventory shall show all property acquired since the date of the last inventory. When any inventory fails to show any property shown on the previous inventory, ~~then~~ a complete explanation accounting for the property or the disposition thereof shall be attached to the inventory and submitted to the Property Inventory Control Division. All property managers shall keep at all times in their files a copy of all inventories submitted to the Property Inventory Control Division, and the copies shall be subject to examination by any and all state auditors or employees of the Department of Examiners of Public Accounts.

(2) Each property manager shall be the custodian of, and responsible for, all property in his or her department or agency. When any property is entrusted to other employees or officers of the department or agency, the property manager shall require a written receipt of the property so entrusted~~,~~ ~~which~~. The receipt shall be ~~executed~~ signed by the ~~person~~ individual receiving the property. In that event, the property manager shall be relieved of responsibility of the property~~,~~ and the employee or officer of the department or agency shall be responsible for the property.

(3) No property, except property being transferred to the Department of Archives and History under Section 41-6-10, shall be disposed of, transferred, assigned, or entrusted to

any other department, agency, or employee thereof without the written permission of ~~the~~ any of the following or his or her designee:

a. The Director of the Alabama Department of Economic and Community Affairs, Surplus Property Division ~~or the~~.

b. The Governor ~~of the State of Alabama or the designee of either of them~~.

c. The Chief of the Property Inventory Control Division of the Office of the State Auditor.

(4)a. Each property manager shall report to the Office of the State Auditor, on a form and in a manner prescribed by the State Auditor, the loss or theft of any property required to be inventoried pursuant to this section not more than 30 days after the property manager learns of the loss or theft.

b. The Property Inventory Control Division shall report the loss or theft to the Division of Investigations, in a manner prescribed by the State Auditor, and provide a brief summary detailing the circumstances surrounding the loss, regardless of whether the loss or theft was marked "non-negligent."

~~(4)~~ (5) ~~Biannually,~~ Every two years, the Property Inventory Control Division shall conduct an inventory of all ~~such~~ state personal property, excluding historical materials in the custody of the Department of Archives and History, holding every officer or employee strictly accountable for all personal property assigned to his or her custody.

~~(5)~~ (6) No later than November 30 of each new fiscal year, the State Auditor shall report in writing to the

Governor all losses and missing items of state property ~~valued at more than five hundred dollars ($500)~~ that meet or exceed the threshold value as revealed by the most recent inventory of state personal property. No later than November 30 of each fiscal year, the State Auditor shall publish on the website of the Office of the State Auditor the Annual Production Report and Losses Reports for the prior fiscal year. Quarterly Losses Reports shall be published on the website within 30 days of the close of each quarter.

~~(6)~~ (7) Whenever any property manager ceases for any reason to be the property manager of his or her department or agency, the director of the department or agency, or the supervisor of the property manager, shall immediately notify in writing the Property Inventory Control Division. The division shall immediately check the inventories of all property assigned to the property manager in the department or agency, and the successor to the property manager shall execute a written receipt for all property received by him or her or coming into his or her custody or control. ~~The last payment of salary due the property manager shall be withheld until a complete check of the inventory of the property has been made and approved.~~ In the event of any shortages, the property manager ~~shall~~ may be held strictly accountable based on internal agency written procedures. Notwithstanding the foregoing, the property manager shall not be held accountable for property entrusted to any other employee or officer of the department or agency and for which he or she holds the written receipt of the employee or officer.

(c) The State Auditor or, if delegated by the State Auditor, the Chief of the Property Inventory Control Division, may review and analyze the internal policies relating to the inventorying of state property of a state department, office, bureau, board, or agency to ensure that state property is being properly inventoried. Upon receiving a written request from the State Auditor, a property manager shall submit the internal policies to the State Auditor for review."

"§36-16-10

(a) The Chief of the Property Inventory Control Division shall have the authority to carry out ~~the provisions of~~ Sections 36-16-8 through 36-16-11~~,~~ and shall require that each department, office, bureau, board, or agency of the state carry out fully ~~the provisions of~~ Sections 36-16-8 through 36-16-11 applicable to ~~such~~ the department, office, bureau, board, or agency.

(b) In the event the Chief of the Property Inventory Control Division neglects to perform the duties imposed upon him or her by Sections 36-16-8 through 36-16-11, the State Auditor shall report such neglect to the ~~personnel board~~ State Personnel Board, ~~which~~ and the board shall administer ~~such~~ disciplinary action against the chief of the division, including the right to discharge him or her, as the board deems proper under the circumstances.

(c) In the event the head of any department or officer in charge of any office, bureau, board, or agency of the state neglects to perform the duties imposed upon him or her by Sections 36-16-8 through 36-16-11, he or she shall be liable

~~for the sum of $5.00~~ in the amount of five dollars ($5) for each day ~~such~~the neglect continues and for the value of ~~any and~~ all personal property losses to the state as a result of ~~such~~ the neglect."

"§36-16-11

There is ~~hereby expressly~~ exempt from Sections 36-16-8 to 36-16-10, inclusive, all ~~livestock,~~ of the following:

(1) Livestock, animals, and farm and agricultural products.

(2) ~~and property~~ Property owned or used by, or in connection with~~,~~ or under the control of, ~~all public schools, universities, colleges, trade schools, Alabama Institute for Deaf and Blind, State Library Service, and all~~ any public preK-12 school, state preK-12 school, or two-year or four-year public institution of higher education.

(3) Property owned or used by, or in connection with or under the control of, any facility owned or operated by the Department of Mental Health which provides mental health or psychiatric care services.

(4) Any fire control or fire rescue equipment acquired by the Alabama Forestry Commission from sources other than state agencies and subsequently donated to volunteer fire departments pursuant to Section 9-3-19~~; provided, Sections 36-16-8 to 36-16-10, inclusive, shall not apply to the Alabama hospitals for the insane and the Partlow State School and Hospital~~."

Section 2. Section 36-16-1.1 is added to the Code of Alabama 1975, to read as follows:

§36-16-1.1

(a) For purposes of this section, the term "state property" refers to any state property that meets or exceeds the threshold value, as defined in Section 36-16-8.

(b) There is created within the Office of State Auditor the Division of Investigations which shall be responsible for carrying out investigations described in this section. The division may initiate an investigation upon a request of the State Auditor or the Property Inventory Control Division or, upon receiving notice, whether through its website or through another channel of communication, of acts of negligence in the loss, theft, or damage of state property.

(c)(1) The Division of Investigation may investigate any instance of lost, stolen, or damaged state property, including instances where marked as "non-negligent" by the custodial agency. If in carrying out a full investigation, including the procuring of evidence, the division confirms that the loss, theft, or damage was not negligent, the division shall issue a finding of "non-negligence."

(2) If the division finds that the loss, theft, or damage was caused by negligence or willful neglect, the State Auditor may compel the offending public official or public employee to pay the value of the lost, stolen, or damaged property, and if such amount is not recovered, the State Auditor shall certify the facts and amount due to the Attorney General. The Attorney General may bring civil action in the name of the state against the employee.

(d) Governmental entities, including any agency or

board of the state or political subdivision thereof that is audited by the State Auditor, shall cooperate with and provide assistance to the Division of Investigations by providing necessary information to allow the division to carry out its investigations in a timely manner.

(e) The Division of Investigations shall refer to the Attorney General or the appropriate district attorney any matter where there is a reasonable belief that a criminal violation has occurred.

Section 3. This act shall become effective on October 1, 2026.