

February 21, 2024

The Honorable Mike Thompson, Chairperson
Senate Committee on Federal and State Affairs
300 SW 10th Avenue, Room 144-S
Topeka, Kansas 66612

Dear Senator Thompson:

SUBJECT: Fiscal Note for SB 411 by Senator Olson

In accordance with KSA 75-3715a, the following fiscal note concerning SB 411 is respectfully submitted to your committee.

SB 411 would abolish the Division of Legislative Post Audit and the Legislative Post Audit Committee. In addition, the bill would create the Office of State Auditor, including a new elected State Auditor, and would enact the State Audit Act.

For the new office, the State Auditor would be charged with the administration of all laws relating to the conduct of audits under state or federal law with a biweekly pay of \$3,307.8, or approximately \$86,000 per year. The bill would require the State Auditor to: (1) establish appropriate systems of accounting for all public officials of the state; (2) audit the accounts of state agencies, as required by law; (3) audit the State Treasury at least once in each fiscal year; (4) conduct audits and investigations, as required by law, (5) prepare and submit an annual report to the Governor and the Legislature on the audits conducted by the Office of the State Auditor in the immediately preceding calendar year; and (6) establish appropriate systems, supervise the budgeting systems, and audit the accounts of political subdivisions of the state. The State Auditor would be able to adopt rules and regulations to implement the responsibilities of the new agency.

At the general election held in 2026, and every subsequent four years, the State Auditor would be elected. In the event of a vacancy of the position, the Governor would appoint a qualified individual to serve for the unexpired term. The bill would allow the State Auditor to appoint the positions of Assistant State Auditor and Deputy Assistant State Auditor, who would be required to take the oath of office required of public officers. These positions would be in the unclassified civil service system, along with any other employees who would be employed in the new agency.

On January 11, 2027, the bill would abolish the Legislative Post Audit Committee and the Division of Legislative Post Audit. All powers, duties, and functions of these two organizations would be transferred to the Office of the State Auditor. Unless otherwise provided, the State Auditor would be the successor to the powers, duties, and functions of these two organizations.

Every act performed in the exercise of the powers, duties, and functions under the authority of the Office of the State Auditor Act would be deemed to have the same force and effect as if performed by the Legislative Post Audit Committee, the Division of Legislative Post Audit, in which such powers, duties and functions were vested prior to January 11, 2027.

On January 11, 2027, any officers and employees who were engaged in the performance of powers, duties, or functions of the Division of Legislative Post Audit, and who, in the opinion of the State Auditor, are necessary to perform the powers, duties, and functions of the Office of the State Auditor, would become officers and employees of the Office of the State Auditor. Any affected officer or employee would retain all retirement benefits and all rights of civil service that had been vested.

The bill would allow the Governor to resolve any conflict regarding any power, function, or duty, the disposition of any unexpended balance of any appropriation, or any property or records, and the decision would be final. The Office of the State Auditor would have the legal custody of all records and writings of the Legislative Post Audit Committee and the Division of Legislative Post Audit.

The bill would enact the State Audit Act. The Act would require audit work to be conducted at each state agency at least once every three years, as directed by the State Auditor. Written reports on the results of the audits would be furnished to the Governor, Legislature, Director of Accounts and Reports, Director of the Budget, the state agency that is audited, and any other applicable individuals or organizations.

The State Auditor would be required to report immediately in writing to the Governor and the Attorney General whenever it appears in the opinion of the State Auditor that there may have occurred any violation of criminal statutes or any instances of misfeasance, malfeasance or nonfeasance by a public officer or employee disclosed by any audit or audit work conducted. The State Auditor would furnish the Attorney General all information relative to any report.

The Attorney General would be required to institute and prosecute civil proceedings against any delinquent officer or employee, or upon the officer or employee's official bond, or both, as may be needed to recover for the state any funds or other assets misappropriated. The Attorney General would also prosecute any ouster and criminal proceedings. Any individual receiving tax information under the Act would be subject to the same duty of confidentiality imposed by law upon the personnel of the Department of Revenue. The bill would also outline confidentiality requirements for individuals handling information for the State Auditor. The State Auditor would be required to immediately report to the Committee on Surety Bonds and Insurance when any audit or audit work conducted discloses a shortage in the accounts of any state agency, officer, or employee. In the discharge of the duties imposed under the State Audit Act, the State Auditor may require state agencies to preserve and make available any accounts, records, documents, vouchers, requisitions, payrolls, and other evidence of financial transactions.

The Act would specify that any audits conducted would be made at the discretion of the State Auditor. In addition to the specified required audits, the State Auditor could direct any additional audits to determine: (1) whether any state agency is carrying out only those activities or programs authorized by the Legislature; (2) whether the programs and activities of a state agency, or a particular program or activity, are being efficiently and effectively operated; (3)

whether any new activity or program is being efficiently and effectively implemented in accordance with the intent of the Legislature; (4) whether there is a need for change in any authorized activity or program of a state agency; (5) whether any reorganization of a state agency, or group of state agencies, is needed or justified to accomplish the results of programs or activities authorized by the Legislature; or (6) any combination of the purposes specified above.

The State Auditor may direct the audit of any state agency or agencies when so requested in writing by the Governor or any member or committee of the Legislature. Any written request would specify the desired object of the audit requested and the reasons for the audit. The State Auditor may modify the object and direct the details of the audit to be performed.

At the State Auditor's discretion, or upon the written request of the Governor or a member of committee of the Legislature, information technology audits may be performed. The bill would outline the potential scopes of these information technology audits, as well as a list of individuals, state agencies, and Legislative committees that would receive the results of the audits.

The bill would create in the State Treasury the "Audit Services Fund," which would be used by the State Auditor to deposit reimbursements for furnishing any audit services. Whenever the State Auditor would perform any additional audit work for any state agency to satisfy federal government requirements and would incur costs in addition to those attributable to the normal operations of the Office of the State Auditor, the agency would make charges for those additional costs. Although the bill would take effect and be in force from and after January 1, 2026, and its publication in the statute book, most of the provisions regarding the transfer of duties would be effective on January 11, 2027.

According to the Legislative Division of Post Audit (LPA), the enactment of the bill would have no fiscal effect until FY 2027. The functions of the agency, as well as its oversight committee, would be transferred to the State Auditor in January 2027 (FY 2028). The agency indicates that the transfer would not initially increase State General Fund expenditures between the two agencies; however, the long-term fiscal effects beyond FY 2028 would depend on how the State Auditor's office would be staffed and resourced. LPA reports that the current FY 2024 approved budget is approximately \$3.5 million, including 26.00 FTE positions.

In addition, LPA notes that the Department of Administration is currently responsible for Kansas' annual statewide financial audit. Although the bill does not specifically address this audit, if the State Auditor would be responsible for this audit, the new agency would likely need to have a memorandum of agreement for the funding of this audit from the Department of Administration.

The Department of Administration reports that to set up the state's accounting system for the State Auditor, one-time costs totaling \$2,760 would be required; however, these additional costs would be considered negligible, and the agency would be able to pay for these costs out of its existing budget resources.

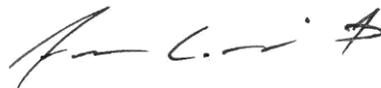
Legislative Administrative Services reports that the enactment of the bill would have no long-term effect on the Legislature's budget, as all costs for the meetings of the Legislative Post Audit Committee are paid from the LPA budget, which would be transferred to the State Auditor in FY 2028.

The State Treasurer, the Department of Commerce, and KPERS are currently subject to audit by LPA. The existing powers and duties of LPA would be assumed by the State Auditor with the enactment of the bill. All agencies would assume that the number, scope, and timing of audits with the enactment of the bill would be generally consistent with current levels existing under current law. Additional administrative costs for these agencies likely would be minimal and could be accommodated using existing budget resources.

The Secretary of State indicates the enactment of the bill would require the agency to do the following: provide training and update manuals for county election officials; update the agency website, documents, and information provided to the public; work with media, political parties, candidates, and the public to ensure knowledge of the addition of State Auditor as an elected office. In addition, the bill would also allow the State Auditor to establish appropriate systems of accounting for all public officials which would include the Secretary of State. Although there would be potential for additional costs for updating or acquiring a new accounting system, a fiscal effect cannot be estimated.

The Attorney General indicates that the enactment of the bill would increase its caseload for reviewing and potentially prosecuting cases referred from the State Auditor. The agency indicates that an additional 2.00 FTE Attorneys at a cost of \$240,000 (including fringe benefits), as well as 1.00 FTE Legal Assistant at a cost of \$80,000 (including fringe benefits), would be required. In total, additional expenditures totaling \$320,000 and 3.00 FTE positions would be required in FY 2028. Any fiscal effect associated with SB 411 is not reflected in *The FY 2025 Governor's Budget Report*.

Sincerely,



Adam C. Proffitt
Director of the Budget

cc: Kristen Rottinghaus, Division of Post Audit
William Hendrix, Office of the Attorney General
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