
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 562 **Hearing Date:** July 11, 2017
Author: Muratsuchi
Version: June 1, 2017
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *California State Auditor: Interference*

HISTORY

Source: Author

Prior Legislation: SB 1395 (Rubio), Ch. 281, Stats. 2012
AB 187 (Lara) Ch. 451, Stats. 2011
SB 1452 (Speier) Ch. 452, Stats. 2006
SB 1437 (Speier) Ch. 251, Stats. 2004
SB 37 (Maddy) Ch. 12, Stats. 1993

Support: Unknown

Opposition: None known

Assembly Floor Vote: Not relevant

PURPOSE

This purpose of this bill is to create a misdemeanor for interfering, obstructing, or impeding the California State Auditor in the performance of his or her official duties relating to an audit.

Existing law establishes the California State Auditor under the direction of the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy and provides that in order to be free of organizational impairments to independence, the office shall be independent of the executive branch and legislative control. (Gov. Code, § 8543.)

Existing law requires the California State Auditor to conduct audits requested by the Legislature's Joint Legislative Audit Committee relating to a state or local governmental agency or other publicly created entity. (Gov. Code, § 8546.1.)

Existing law authorizes the California State Auditor to issue subpoenas and the superior court has jurisdiction to compel the attendance of witnesses, the making of oral or written sworn statements, and the production of papers, books, accounts, and documents, as required by any such subpoena. (Gov. Code, § 8545.5.)

Existing law requires immediately upon completion of an audit, the California State Auditor to transmit a copy of the audit report to the commission. Not later than 24 hours after delivery to the commission, the California State Auditor shall deliver the report to the Legislature, appropriate committees or subcommittees of the Legislature, and the Governor. Once transmitted to these parties, the report shall be made available to the public. (Gov. Code, § 8546.1.)

Existing law requires the California State Auditor to request that any state agency, as defined, any local governmental agency, including any city, county, city and county, school, or special district, or any publicly created entity, that is the subject of an audit or investigation, to provide updates on its progress in implementing the recommendations made by the California State Auditor, at intervals prescribed by the California State Auditor. (Gov. Code, § 8546.2, subd. (a).)

Existing law states, notwithstanding any other provision of law, every contract involving the expenditure of public funds in excess of \$10,000 entered into by any state agency, board, commission, or department or by any other public entity, including a city, county, city and county, or district, shall be subject to the examination and audit of the California State Auditor, at the request of the public entity or as part of any audit of the public entity, for a period of three years after final payment under the contract. (Gov. Code, § 8546.7.)

Existing law states that notwithstanding any other provision of law, the California State Auditor during regular business hours shall have access to and authority to examine and reproduce, any and all books, accounts, reports, vouchers, correspondence files, and all other records, bank accounts, and money or other property, of any agency of the state, whether created by the California Constitution or otherwise, any local governmental entity, including any city, county, and school or special district, and any publicly created entity, for any audit or investigation. (Gov. Code, § 8545.2, subd. (a).)

Existing law provides that any officer or employee of any agency or entity having these records or property in his or her possession, under his or her control, or otherwise having access to them, shall permit access to, and examination and reproduction thereof, upon the request of the California State Auditor or his or her authorized representative. (*Id.*)

Existing law states that any officer or person who fails or refuses to permit access and examination and reproduction, as required, is guilty of a misdemeanor. (Gov. Code, § 8545.2, subd. (c).)

Existing law states that every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his or her hands for any purpose, is punishable by imprisonment in county jail for two, three, or four years if, as to the whole or any part of the record, map, book, paper, or proceeding, the officer willfully does or permits any other person to do any of the following:

- Steal, remove, or secrete;
- Destroy, mutilate, or deface; or,
- Alter or falsify. (Gov. Code, § 6200.)

Existing law provides that any person other than an officer who is guilty of any of the acts described in Government Code section 6200 may be punished by an alternate felony-misdemeanor. (Gov. Code, § 6201.)

Existing law provides that any person who alters a certified copy of an official record, or knowingly furnishes an altered certified copy of an official record, of this state, including the executive, legislative, and judicial branches thereof, or of any city, county, city and county, district, or political subdivision thereof, is guilty of a misdemeanor. (Pen. Code, § 115.3.)

This bill provides that any person who, with intent to deceive or defraud, interferes, obstructs or impedes the California State Auditor in the performance of his or her official duties relating to an audit required by statute or requested by the Joint Legislative Audit Committee is guilty of a misdemeanor.

This bill makes the new misdemeanor punishable by a fine not to exceed \$10,000, or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

COMMENTS

1. Need for This Bill

According to the author:

Existing law establishes the California State Auditor (Auditor) with duties which include conducting financial and performance audits of state or local governmental agencies, or any other publicly created entity. Individuals employed by an agency or public entity being audited are required, by law, to allow access to any records or property requested in the course of an audit. Under current law, any person who fails or refuses to allow the Auditor access is guilty of a misdemeanor. Unfortunately, there are no such penalties for individuals who intentionally interfere with or obstruct an audit.

2. Recent Audit of the University of California Office of the President

Pursuant to a Joint Legislative Audit Committee request, the California State Auditor performed an audit of the University of California (UC) Office of the President. “As the systemwide headquarters of the university, the university’s Office of the President, which employed 1,667 staff in fiscal year 2015–16, serves two distinct functions for campuses: it provides certain central administrative services, and it manages systemwide initiatives that benefit multiple campuses. (California State Auditor, *University of California Office of the President: It Failed to Disclose Tens of Millions in Surplus Funds and Its Budget Practices Are Misleading* (April 2017) Report Number: 2016-130, p.8.) The Office of the President has a third role which is the performance of various administrative tasks for the support of its staff. These tasks include overseeing human resources, providing information technology assistance, and preparing and administering its own budget. (*Id.* at p. 9.) For the fiscal year 2015-16, the UC had revenues totaling \$30 billion. (*Ibid.*)

The Auditor's report concluded that the Office of the President "amassed substantial reserve funds, used misleading budgeting practices, provided its employees with generous salaries and atypical benefits, and failed to satisfactorily justify its spending on systemwide initiatives." (*Id.*, Public Letter.)

The key findings of the audit include:

- The Office of the President has accumulated more than \$175 million in undisclosed restricted and discretionary reserves; as of fiscal year 2015–16, it had \$83 million in its restricted reserve and \$92 million in its discretionary reserve.
- More than one-third of its discretionary reserve, or \$32 million, came from unspent funds from the campus assessment—an annual charge that the Office of the President levies on campuses to fund the majority of its discretionary operations.
- In certain years, the Office of the President requested and received approval from the Board of Regents (regents) to increase the campus assessment even though it had not spent all of the funds it received from campuses in prior years.
- The Office of the President did not disclose the reserves it had accumulated, nor did it inform the regents of the annual undisclosed budget that it created to spend some of those funds. The undisclosed budget ranged from \$77 million to \$114 million during the four years we reviewed.
- The Office of the President was unable to provide a complete listing of the systemwide initiatives, their costs, or an assessment of their continued benefit to the university.
- While it appears that the Office of the President's administrative spending increased by 28 percent, or \$80 million, from fiscal years 2012–13 through 2015–16, the Office of the President continues to lack consistent definitions of and methods for tracking the university's administrative expenses. (*Ibid.*)

Also noted by the report were actions taken by the Office of the President to interfere with the audit:

Specifically, we administered two surveys to the campuses seeking their perspectives on issues such as the quality of the Office of the President's services and programs. However, correspondence between the Office of the President and the campuses shows that the Office of the President inappropriately reviewed the campuses' survey responses and that campuses subsequently made changes before submitting them to us. Specifically, when we compared the campuses' original survey responses sent to the Office of the President to the later versions of their responses that they eventually sent us, we found that the campus statements that were initially critical of the Office of the President had been removed or significantly revised and that the surveys' quality ratings had been shifted to be more positive. Because the Office of the President inappropriately inserted itself into the survey process, auditing standards prohibit us from drawing conclusions based on the survey results. As a result, the Office of the President

missed an opportunity to receive feedback from its key stakeholders, and it demonstrated an unwillingness to receive constructive feedback. (*Id.* at pp. 4-5.)

This bill would create a new misdemeanor, punishable by imprisonment in county jail for up to one year, or a fine not to exceed \$10,000, or both, for any person who, with intent to deceive or defraud, interferes, obstructs, or impedes the California State Auditor in the performance of his or her official duties relating to an audit required by statute or requested by the Joint Legislative Audit Committee.

The existing misdemeanor violations in sections of the Government Code relating to the State Auditor are punishable as misdemeanors by a fine of up to \$1,000, or imprisonment in the county jail for up to six months, or both the fine and imprisonment. Does the conduct that this bill seeks to punish justify a higher penalty than what is typically proscribed for a misdemeanor violation of these sections? As described above, in the audit of the University of California Office of the President, it appears that the survey responses were reviewed by the office and subsequently the responses were changed. While this may be inappropriate, does that conduct warrant imprisonment of up to a year in county jail? Additionally, a \$10,000 fine would be substantially increased (\$41,225) due to penalty assessments that attach to every criminal fine. Is a fine that is ten times higher than the standard misdemeanor justified?

3. Existing Laws that Prohibit Altering or Falsifying Records

This bill creates a new crime for obstructing, impeding or interfering with the official duties of the state auditor. As described in Note 2, the impetus of this bill was the conclusion by the state auditor that the Office of the President may have interfered with a recent audit. Specifically, it was alleged that responses to surveys sent out to all of the UC campuses by the state auditor were filtered through the Office of the President and subsequently altered. Existing law contains various statutes that punish the altering or falsifying of documents.

It is a misdemeanor to alter a certified copy, or to knowingly furnish an altered certified copy, of an official record. The statute covers records of the state's executive, legislative and judicial branches, as well as records of any city, county, district or political subdivision of the state. (Pen. Code, § 115.3.)

It is a misdemeanor for any officer authorized by law to make or give any certificate or other writing to make and deliver as true any certificate or writing containing statements which he or she knows to be false. (Gov. Code, § 6203.)

It is also unlawful for a person who, having custody of any record, willfully does, or permits another person to, among other things, alter or falsify a record. (Gov. Code, §§ 6200, 6201.) The penalty can range from a misdemeanor to a felony. (*Ibid.*)

Could the conduct criminalized by this bill already be prosecuted under one of the existing provisions above?

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