

**LEGISLATIVE AUDIT AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karen Mayne**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends provisions relating to the duties and practices of the legislative auditor general.

**Highlighted Provisions:**

This bill:

- ▶ permits the legislative auditor general and the audit subcommittee of the Legislative Management Committee to designate certain audit findings and recommendations as critical;
- ▶ creates procedures and requirements for reporting on critical findings and recommendations;
- ▶ creates procedures for legislative responses and requirements for entities that are subject to a critical finding or recommendation; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**36-12-15**, as last amended by Laws of Utah 2012, Chapter 137



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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **36-12-15** is amended to read:

**36-12-15. Office of Legislative Auditor General established -- Qualifications -- Powers, functions, and duties.**

(1) There is created an Office of Legislative Auditor General as a permanent staff office for the Legislature.

(2) The legislative auditor general shall be a licensed certified public accountant or certified internal auditor with at least five years of experience in the auditing or public accounting profession, or the equivalent, prior to appointment.

(3) The legislative auditor general shall appoint and develop a professional staff within budget limitations.

(4) (a) The Office of the Legislative Auditor General shall exercise the constitutional authority provided in Article VI, Sec. 33, Utah Constitution.

(b) Under the direction of the legislative auditor general, the office shall:

(i) conduct comprehensive and special purpose audits, examinations, and reviews of any entity that receives public funds;

(ii) prepare and submit a written report on each audit, examination, or review to the Legislative Management Committee, the audit subcommittee, and to all members of the Legislature within 75 days after the audit or examination is completed; and

(iii) as provided in Section [36-24-101](#):

(A) monitor all new programs and agencies created during each Annual General Session or Special Session of the Legislature;

(B) provide each new program and agency created with a list of best practices in setting up their program or agency, including:

(I) policies;

(II) performance measures; and

(III) data collection;

(C) send each new program and agency:

(I) within one year after its creation, a survey instrument requesting a self evaluation that includes policies, performance measures, and data collection; and

59 (II) within two years after its creation, a survey instrument requesting a self evaluation  
60 that includes policies, performance measures, and data collection; and

61 (D) (I) using the new program or agency's response to the self evaluation survey  
62 instruments, recommend to the legislative audit subcommittee that the office conduct an audit  
63 of those new programs and agencies created on which questions have arisen as a result of the  
64 response to the survey instrument and provide a limited scope audit report on those new  
65 programs or agencies on which it receives direction to audit to the legislative interim  
66 committee and to the legislative appropriations subcommittee with oversight responsibility for  
67 that program or agency on or before the November interim meeting; and

68 (II) include within this limited scope audit report a recommendation as to whether the  
69 program or agency is fulfilling its statutory guidelines and directives.

70 (5) The audit, examination, or review of any entity that receives public funds may  
71 include a determination of any or all of the following:

72 (a) the honesty and integrity of all its fiscal affairs;

73 (b) the accuracy and reliability of its financial statements and reports;

74 (c) whether or not its financial controls are adequate and effective to properly record  
75 and safeguard its acquisition, custody, use, and accounting of public funds;

76 (d) whether or not its administrators have faithfully adhered to legislative intent;

77 (e) whether or not its operations have been conducted in an efficient, effective, and cost  
78 efficient manner;

79 (f) whether or not its programs have been effective in accomplishing intended  
80 objectives; and

81 (g) whether or not its management control and information systems are adequate and  
82 effective.

83 (6) The Office of Legislative Auditor General [~~may~~]:

84 (a) (i) shall, notwithstanding any other provision of law, [~~obtain~~] have access to all  
85 records, documents, and reports of any entity that receives public funds that are necessary to  
86 the scope of [~~its duties; and~~] the duties of the legislative auditor general or the office;

87 (ii) [~~if necessary;~~] may issue a subpoena to obtain access as provided in Subsection  
88 (6)(a)(i) using the procedures contained in Title 36, Chapter 14, Legislative Subpoena Powers;  
89 and

90           (iii) notwithstanding any other provision of law, be present for any meeting that is  
91 necessary to the scope of the legislative auditor general's duties, except where that portion of a  
92 meeting is protected by attorney-client privilege due to the specific nature of the subject matter  
93 and the circumstances of that portion of the meeting.

94           (b) establish policies, procedures, methods, and standards of audit work for the office  
95 and staff;

96           (c) prepare and submit each audit report without interference from any source relative  
97 to the content of the report, the conclusions reached in the report, or the manner of disclosing  
98 the results of the legislative auditor general's findings; and

99           (d) prepare and submit the annual budget request for the office.

100           (7) To preserve the professional integrity and independence of the office:

101           (a) no legislator or public official may urge the appointment of any person to the office;  
102 and

103           (b) the legislative auditor general may not be appointed to serve on any board,  
104 authority, commission, or other agency of the state during the legislative auditor general's term  
105 as legislative auditor general.

106           (8) The following records in the custody or control of the legislative auditor general  
107 shall be protected records under Title 63G, Chapter 2, Government Records Access and  
108 Management Act:

109           (a) Records that would disclose information relating to allegations of personal  
110 misconduct, gross mismanagement, or illegal activity of a past or present governmental  
111 employee if the information or allegation cannot be corroborated by the legislative auditor  
112 general through other documents or evidence, and the records relating to the allegation are not  
113 relied upon by the legislative auditor general in preparing a final audit report.

114           (b) Records and audit workpapers to the extent they would disclose the identity of a  
115 person who during the course of a legislative audit, communicated the existence of any waste  
116 of public funds, property, or manpower, or a violation or suspected violation of a law, rule, or  
117 regulation adopted under the laws of this state, a political subdivision of the state, or any  
118 recognized entity of the United States, if the information was disclosed on the condition that  
119 the identity of the person be protected.

120           (c) Prior to the time that an audit is completed and the final audit report is released,

121 records or drafts circulated to a person who is not an employee or head of a governmental  
122 entity for their response or information.

123 (d) Records that would disclose an outline or part of any audit survey plans or audit  
124 program.

125 (e) Requests for audits, if disclosure would risk circumvention of an audit.

126 (f) The provisions of Subsections (8)(a), (b), and (c) do not prohibit the disclosure of  
127 records or information that relate to a violation of the law by a governmental entity or  
128 employee to a government prosecutor or peace officer.

129 (g) The provisions of this section do not limit the authority otherwise given to the  
130 legislative auditor general to classify a document as public, private, controlled, or protected  
131 under Title 63G, Chapter 2, Government Records Access and Management Act.

132 (9) The legislative auditor general shall:

133 (a) be available to the Legislature and to its committees for consultation on matters  
134 relevant to areas of the legislative auditor general's professional competence;

135 (b) conduct special audits as requested by the Legislative Management Committee;

136 (c) report immediately in writing to the Legislative Management Committee through its  
137 audit subcommittee any apparent violation of penal statutes disclosed by the audit of a state  
138 agency and furnish to the Legislative Management Committee all information relative to the  
139 apparent violation;

140 (d) report immediately in writing to the Legislative Management Committee through  
141 its audit subcommittee any apparent instances of malfeasance or nonfeasance by a state officer  
142 or employee disclosed by the audit of a state agency; and

143 (e) make any recommendations to the Legislative Management Committee through its  
144 audit subcommittee with respect to the alteration or improvement of the accounting system  
145 used by any entity that receives public funds.

146 (10) Certain audit findings or recommendations may be designated as critical according  
147 to the following procedures:

148 (a) The legislative auditor general may, as part of preparing an audit, designate a  
149 finding or recommendation in the audit report as a critical finding or recommendation.

150 (b) The audit subcommittee may, by a motion adopted by a majority of the  
151 subcommittee in the meeting where the audit report is presented, designate a finding or

152 recommendation in the audit report as a critical finding or recommendation. However, the audit  
153 subcommittee may not remove or modify a critical designation made by the legislative auditor  
154 general under Subsection (10)(a).

155 (c) The legislative auditor general shall develop and maintain internal policies and  
156 standards for designating a finding or recommendation as critical, based on best practices  
157 found within the areas of the legislative auditor general's professional competence.

158 ~~[(10)]~~ (11) If the legislative auditor general conducts an audit of a state agency that has  
159 previously been audited and finds that the state agency has not implemented a recommendation  
160 made by the legislative auditor general in a previous audit, the legislative auditor general shall,  
161 upon release of the audit:

162 (a) report immediately in writing to the Legislative Management Committee through its  
163 audit subcommittee that the state agency has not implemented that recommendation; and

164 (b) shall report, as soon as possible, that the state agency has not implemented that  
165 recommendation to a meeting of an appropriate legislative committee designated by the audit  
166 subcommittee of the Legislative Management Committee.

167 ~~[(11)(a) Prior to each annual general session, the legislative auditor general shall]~~

168 (12) Before each annual general session, the legislative auditor general shall:

169 (a) prepare a report that:

170 (i) contains a summary of the audits conducted and of actions taken based upon them  
171 during the preceding year[-];

172 ~~[(b)]~~ (ii) [This report shall also set] sets forth any items and recommendations that are  
173 important for consideration in the forthcoming session, together with a brief statement or  
174 rationale for each item or recommendation[-]; and

175 (iii) includes a list of all critical findings and recommendations from audits conducted  
176 during the preceding year and, as determined by the legislative auditor general, a list of  
177 significant actions taken in response to findings and recommendations; and

178 ~~[(c)]~~ (b) [The legislative auditor general shall] deliver the report to the Legislature and  
179 to the appropriate committees of the Legislature.

180 (13) If the legislative auditor general conducts an audit, examination, or review of any  
181 entity that receives public funds and has previously been audited, and if the legislative auditor  
182 general finds that the entity has not implemented a recommendation to address a critical

183 finding or critical recommendation in a previous audit:

184 (a) the legislative auditor general shall report on the above circumstances as follows:

185 (i) concurrently with the release of the audit, report in writing to the audit

186 subcommittee of the Legislative Management Committee that the entity has not implemented

187 the critical finding or recommendation;

188 (ii) as soon as is reasonably possible after the release of the audit, report on the entity's

189 noncompliance to a meeting of an appropriate legislative subcommittee as determined by the

190 audit subcommittee; and

191 (b) the legislative auditor general shall continue to conduct in-depth annual review of

192 critical findings and recommendations until such time that:

193 (i) the legislative auditor general reports in writing to the audit subcommittee that the

194 entity has sufficiently complied with all critical findings and recommendations; or

195 (ii) the Legislative Management Committee makes a determination, by a vote of the

196 committee, that no further review is necessary.

197 [~~(12)~~] (14) (a) No person or entity may:

198 (i) interfere with a legislative audit, examination, or review of any entity conducted by

199 the office; or

200 (ii) interfere with the office relative to the content of the report, the conclusions

201 reached in the report, or the manner of disclosing the results and findings of the office.

202 (b) Any person or entity that violates the provisions of this Subsection [~~(12)~~] (14) is

203 guilty of a class B misdemeanor.

204 (15) (a) Beginning July 1, 2020, the Office of the Legislative Auditor General may

205 require any current employee, or any applicant for employment, to submit to a

206 fingerprint-based local, regional, and criminal history background check as an ongoing

207 condition of employment.

208 (b) An employee or applicant for employment shall provide a completed fingerprint

209 card to the office upon request. The office shall require that an individual required to submit to

210 a background check under this subsection also provide a signed waiver on a form provided by

211 the office that meets the requirements of Subsection 53-10-108(4).

212 (c) For a noncriminal justice background search and registration in accordance with

213 Subsection 53-10-108(13), the office shall submit to the Bureau of Criminal Identification:

214            (i) the employee's or applicant's personal identifying information and fingerprints for a  
215 criminal history search of applicable local, regional, and national databases; and  
216            (ii) a request for all information received as a result of the local, regional, and  
217 nationwide background check.