

Brady Brammer proposes the following substitute bill:

**Legislative Audit Amendments**

2025 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brady Brammer**

House Sponsor:

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**LONG TITLE**

**General Description:**

This bill enacts provisions related to certain information provided to the legislative auditor general.

**Highlighted Provisions:**

This bill:

- restates the authority of the legislative auditor general;
- excludes certain information provided to the legislative auditor general from the definition of "record";
- permits an entity to provide certain privileged items to the legislative auditor general;
- requires an entity that withholds certain privileged items from the legislative auditor general to expressly assert a privilege;
- permits the legislative auditor general to contest privilege claim;
- requires, in certain circumstances, an entity to submit privileged items to an arbitrator to determine a privilege claim;
- coordinates enactment of provisions with S.J.R. 4, Joint Resolution Amending Court Rules on Attorney Confidentiality; and
- makes technical corrections.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a coordination clause.

**Utah Code Sections Affected:**

AMENDS:

**36-12-15**, as last amended by Laws of Utah 2024, Third Special Session, Chapter 3

**Utah Code Sections affected by Coordination Clause:**

29 **36-12-15**, as last amended by Laws of Utah 2024, Third Special Session, Chapter 3



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

32 *The following section is affected by a coordination clause at the end of this bill.*

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

34 **36-12-15 . Office of the Legislative Auditor General established -- Qualifications**  
35 **-- Powers, functions, and duties -- Reporting -- Criminal penalty -- Employment.**

36 (1) As used in this section:

37 (a) "Audit action" means an audit, examination, investigation, or review of an entity  
38 conducted by the office.

39 (b) "Entity" means:

40 (i) a government organization; or

41 (ii) a receiving organization.

42 (c) "Government organization" means:

43 (i) a state branch, department, or agency; or

44 (ii) a political subdivision, including a county, municipality, special district, special  
45 service district, school district, interlocal entity as defined in Section 11-13-103,  
46 or any other local government unit.

47 (d) "Office" means the Office of the Legislative Auditor General.

48 (e) "Receiving organization" means an organization that receives public funds that is not  
49 a government organization.

50 (2)(a) There is created the Office of the Legislative Auditor General as a permanent staff  
51 office for the Legislature.

52 (b) The authority of the legislative auditor general is:

53 (i) established in Utah Constitution, Article VI, Section 33; and

54 (ii) an extension of the Legislature's inherent inquiry and investigatory power.

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

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

60 (5) The office shall exercise the constitutional authority provided in Utah Constitution,  
61 Article VI, Section 33.

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

- 63 (a) conduct comprehensive and special purpose audits, examinations, investigations, or  
64 reviews of entity funds, functions, and accounts;
- 65 (b) prepare and submit a written report on each audit action to the Audit Subcommittee  
66 created in Section 36-12-8 and make the report available to all members of the  
67 Legislature within 75 days after the audit action is completed;
- 68 (c) monitor, conduct a risk assessment of, or audit any efficiency evaluations that the  
69 legislative auditor general determines necessary, in accordance with Title 63J,  
70 Chapter 1, Part 9, Government Performance Reporting and Efficiency Process, and  
71 legislative rule;
- 72 (d) create, manage, and report to the Audit Subcommittee a list of high risk programs  
73 and operations that:
- 74 (i) threaten public funds or programs;
- 75 (ii) are vulnerable to inefficiency, waste, fraud, abuse, or mismanagement; or  
76 (iii) require transformation;
- 77 (e) monitor and report to the Audit Subcommittee the health of a government  
78 organization's internal audit functions;
- 79 (f) make recommendations to increase the independence and value added of internal  
80 audit functions throughout the state;
- 81 (g) implement a process to track, monitor, and report whether the subject of an audit has  
82 implemented recommendations made in the audit report;
- 83 (h) establish, train, and maintain individuals within the office to conduct investigations  
84 and represent themselves as lawful investigators on behalf of the office;
- 85 (i) establish policies, procedures, methods, and standards of audit work and  
86 investigations for the office and staff;
- 87 (j) prepare and submit each audit and investigative report independent of any influence  
88 external of the office, including the content of the report, the conclusions reached in  
89 the report, and the manner of disclosing the legislative auditor general's findings;
- 90 (k) prepare and submit the annual budget request for the office; and
- 91 (l) perform other duties as prescribed by the Legislature.
- 92 (7) In conducting an audit action of an entity, the office may include a determination of any  
93 or all of the following:
- 94 (a) the honesty and integrity of any of the entity's fiscal affairs;
- 95 (b) the accuracy and reliability of the entity's internal control systems and specific  
96 financial statements and reports;

- 97 (c) whether or not the entity's financial controls are adequate and effective to properly  
98 record and safeguard the entity's acquisition, custody, use, and accounting of public  
99 funds;
- 100 (d) whether the entity's administrators have complied with legislative intent;
- 101 (e) whether the entity's operations have been conducted in an efficient, effective, and  
102 cost efficient manner;
- 103 (f) whether the entity's programs have been effective in accomplishing intended  
104 objectives; and
- 105 (g) whether the entity's management control and information systems are adequate and  
106 effective.
- 107 (8)(a) If requested by the office, each entity that the legislative auditor general is  
108 authorized to audit under Utah Constitution, Article VI, Section 33, or this section  
109 shall, notwithstanding any other provision of law except as provided in Subsection  
110 (8)(b), provide the office with access to information, materials, or resources the office  
111 determines are necessary to conduct an audit, examination, investigation, or review,  
112 including:
- 113 (i) the following in the possession or custody of the entity in the format identified by  
114 the office:
- 115 (A) a record, document, and report; and  
116 (B) films, tapes, recordings, and electronically stored information;
- 117 (ii) entity personnel; and  
118 (iii) each official or unofficial recording of formal or informal meetings or  
119 conversations to which the entity has access.
- 120 (b) To the extent compliance would violate federal law, the requirements of Subsection  
121 (8)(a) do not apply.
- 122 (9)(a) In carrying out the duties provided for in this section and under Utah Constitution,  
123 Article VI, Section 33, the legislative auditor general may issue a subpoena to access  
124 information, materials, or resources in accordance with Chapter 14, Legislative  
125 Subpoena Powers.
- 126 (b) The legislative auditor general may issue a subpoena, as described in Subsection  
127 (9)(a), to a financial institution or any other entity to obtain information as part of an  
128 investigation of fraud, waste, or abuse, including any suspected malfeasance,  
129 misfeasance, or nonfeasance involving public funds.
- 130 (10)(a) As used in this Subsection (10), "privileged item" means an attorney-client

- 131 communication, attorney work product, or information relating to representation of  
132 the entity, governed by:
- 133 (i) Utah Rules of Professional Conduct, Rule 1.6;  
134 (ii) Utah Rules of Evidence, Rule 504; or  
135 (iii) Utah Rules of Professional Conduct, Rule 1.6.
- 136 (b) A lawyer is expressly authorized to provide confidential information on the entity  
137 client's behalf under Utah Rules of Professional Conduct, Rule 1.6(b)(6).
- 138 (c) If requested by the legislative auditor general for an audit action, an entity may  
139 provide a privileged item.
- 140 (d) If an entity withholds a privileged item after a request by the legislative auditor  
141 general for an audit action, the entity shall, for each instance in which the entity  
142 asserts privilege, submit to the legislative auditor general a written statement:
- 143 (i) expressly asserting the privilege and the authority for the privilege claim; and  
144 (ii) for each privilege claim, describing the nature of the privileged item in a manner  
145 that, without revealing the attorney-client communication, attorney work product,  
146 or information itself, will enable the legislative auditor general to evaluate the  
147 privilege claim.
- 148 (e)(i) The legislative auditor general may contest a privilege claim asserted under  
149 Subsection (10)(d) by submitting the privilege claim to an arbitrator, selected by  
150 the office, for review.
- 151 (ii) The legislative auditor general shall provide to the entity:
- 152 (A) notification in writing of each contested privilege claim; and  
153 (B) the arbitrator's information.
- 154 (iii) The entity:
- 155 (A) shall provide to the arbitrator the privileged item described in the contested  
156 privilege claim no later than seven business days after receiving the written  
157 notification described in Subsection (10)(e)(ii); and
- 158 (B) may provide supplemental information in support of a privilege claim.
- 159 (iv) No later than seven business days after the arbitrator receives the privileged item  
160 under Subsection (10)(e)(iii), the arbitrator shall:
- 161 (A) conduct an in camera review of the privileged item and authority for the  
162 relevant privilege claim;
- 163 (B) review supplemental information submitted under Subsection (10)(e)(iii)(B)  
164 and any supplemental information provided by the legislative auditor general;

- 165                    and
- 166                    (C) issue a determination as to whether the entity has a valid claim of privilege,
- 167                    favoring access to the legislative auditor general.
- 168                    (v) If the arbitrator determines that an entity does not have a valid privilege claim, the
- 169                    entity shall:
- 170                    (A) provide the withheld information, material, resource, or communication to the
- 171                    legislative auditor general; and
- 172                    (B) reimburse the legislative auditor general for compensation of the arbitrator.
- 173                    (f) The arbitrator may not disclose:
- 174                    (i) a privileged item; or
- 175                    (ii) supplemental information described in Subsection (10)(e)(iii)(B).
- 176                    (g) Provisions of Subsection (10)(e) are not subject to Title 78B, Chapter 11, Utah
- 177                    Uniform Arbitration Act.
- 178                    ~~[(10)]~~ (11) To preserve the professional integrity and independence of the office:
- 179                    (a) no legislator or public official may urge the appointment of any person to the office;
- 180                    and
- 181                    (b) the legislative auditor general may not be appointed to serve on any board, authority,
- 182                    commission, or other agency of the state during the legislative auditor general's term
- 183                    as legislative auditor general.
- 184                    ~~[(11)]~~ (12)(a) The following records in the custody or control of the legislative auditor
- 185                    general are protected records under Title 63G, Chapter 2, Government Records
- 186                    Access and Management Act:
- 187                    (i) records and audit work papers that would disclose information relating to
- 188                    allegations of personal misconduct, gross mismanagement, or illegal activity of a
- 189                    past or present governmental employee if the information or allegation cannot be
- 190                    corroborated by the legislative auditor general through other documents or
- 191                    evidence, and the records relating to the allegation are not relied upon by the
- 192                    legislative auditor general in preparing a final audit report;
- 193                    (ii) records and audit workpapers that would disclose the identity of a person who,
- 194                    during the course of a legislative audit, communicated the existence of:
- 195                    (A) unethical behavior;
- 196                    (B) waste of public funds, property, or personnel; or
- 197                    (C) a violation or suspected violation of a United States, Utah state, or political
- 198                    subdivision law, rule, ordinance, or regulation, if the person disclosed on the

- 199 condition that the identity of the person be protected;
- 200 (iii) before an audit is completed and the final audit report is released, records or  
201 drafts circulated to a person who is not an employee or head of an entity for  
202 review, response, or information;
- 203 (iv) records that would disclose:
- 204 (A) an outline;
- 205 (B) all or part of an audit survey, audit risk assessment plan, or audit program; or  
206 (C) other procedural documents necessary to fulfill the duties of the office; and
- 207 (v) requests for audits, if disclosure would risk circumvention of an audit.
- 208 (b) The provisions of Subsection (11)(a) do not prohibit the disclosure of records or  
209 information to a government prosecutor or peace officer if those records or  
210 information relate to a violation of the law by an entity or entity employee.
- 211 (c) A record, as defined in Section 63G-2-103, created by the office in a closed meeting  
212 held in accordance with Section 52-4-205:
- 213 (i) is a protected record, as defined in Section 63G-2-103;
- 214 (ii) to the extent the record contains information:
- 215 (A) described in Section 63G-2-302, is a private record; or  
216 (B) described in Section 63G-2-304, is a controlled record; and
- 217 (iii) may not be reclassified by the office.
- 218 (d) The provisions of this section do not limit the authority otherwise given to the  
219 legislative auditor general to maintain the private, controlled, or protected record  
220 status of a shared record in the legislative auditor general's possession or classify a  
221 document as public, private, controlled, or protected under Title 63G, Chapter 2,  
222 Government Records Access and Management Act.
- 223 (e) If provided to the legislative auditor general, the following are not a record, as  
224 defined in Section 63G-2-103:
- 225 (i) a privileged item, as defined in Subsection (10)(a); and  
226 (ii) supplemental information described in Subsection (10)(e)(iii)(B).
- 227 ~~[(12)]~~ (13) The legislative auditor general shall:
- 228 (a) be available to the Legislature and to the Legislature's committees for consultation on  
229 matters relevant to areas of the legislative auditor general's professional competence;
- 230 (b) conduct special audits as requested by the Audit Subcommittee;
- 231 (c) report immediately to the Audit Subcommittee any apparent violation of penal  
232 statutes disclosed by the audit of an entity and furnish to the Audit Subcommittee all

- 233 information relative to the apparent violation;
- 234 (d) report immediately to the Audit Subcommittee any apparent instances of
- 235 malfeasance or nonfeasance by an entity officer or employee disclosed by the audit of
- 236 an entity; and
- 237 (e) make any recommendations to the Audit Subcommittee with respect to the alteration
- 238 or improvement of the accounting system used by an entity.
- 239 ~~[(13)]~~ (14) If the legislative auditor general conducts an audit of an entity that has
- 240 previously been audited and finds that the entity has not implemented a recommendation
- 241 made by the legislative auditor general in a previous audit report, the legislative auditor
- 242 general shall report to the Audit Subcommittee that the entity has not implemented the
- 243 recommendation.
- 244 ~~[(14)]~~ (15) Before each annual general session, the legislative auditor general shall:
- 245 (a) prepare an annual report that:
- 246 (i) summarizes the audits, examinations, investigations, and reviews conducted by the
- 247 office since the last annual report; and
- 248 (ii) evaluate and report the degree to which an entity that has been the subject of an
- 249 audit has implemented the audit recommendations;
- 250 (b) include in the report any items and recommendations that the legislative auditor
- 251 general believes the Legislature should consider in the annual general session; and
- 252 (c) deliver the report to the Legislature and to the appropriate committees of the
- 253 Legislature.
- 254 ~~[(15)]~~ (16)(a) If the chief officer of an entity has actual knowledge or reasonable cause to
- 255 believe that there is misappropriation of the entity's public funds or assets, or another
- 256 entity officer has actual knowledge or reasonable cause to believe that the chief
- 257 officer is misappropriating the entity's public funds or assets, the chief officer or,
- 258 alternatively, the other entity officer, shall immediately notify, in writing:
- 259 (i) the office;
- 260 (ii) the attorney general, county attorney, or district attorney; and
- 261 (iii)(A) for a state government organization, the chief executive officer;
- 262 (B) for a political subdivision government organization, the legislative body or
- 263 governing board; or
- 264 (C) for a receiving organization, the governing board or chief executive officer
- 265 unless the chief executive officer is believed to be misappropriating the funds
- 266 or assets, in which case the next highest officer of the receiving organization.



- 267 (b) As described in Subsection [~~(15)~~(a)] (16)(a), the entity chief officer or, if applicable,  
268 another entity officer, is subject to the protections of Title 67, Chapter 21, Utah  
269 Protection of Public Employees Act.
- 270 (c) If the Office of the Legislative Auditor General receives a notification under  
271 Subsection [~~(15)~~(a)] (16)(a) or other information of misappropriation of public funds  
272 or assets of an entity, the office shall inform the Audit Subcommittee.
- 273 (d) The attorney general, county attorney, or district attorney shall notify, in writing, the  
274 Office of the Legislative Auditor General whether the attorney general, county  
275 attorney, or district attorney pursued criminal or civil sanctions in the matter.
- 276 [~~(16)~~] (17)(a) An actor commits interference with a legislative audit if the actor uses  
277 force, violence, intimidation, or engages in any other unlawful act with a purpose to  
278 interfere with:
- 279 (i) a legislative audit action; or
  - 280 (ii) the office's decisions relating to:
    - 281 (A) the content of the office's report;
    - 282 (B) the conclusions reached in the office's report; or
    - 283 (C) the manner of disclosing the results and findings of the office.
- 284 (b) A violation of Subsection [~~(16)~~(a)] (17)(a) is a class B misdemeanor.
- 285 [~~(17)~~] (18)(a) The office may require any current employee, or any applicant for  
286 employment, to submit to a fingerprint-based local, regional, and criminal history  
287 background check as an ongoing condition of employment.
- 288 (b) An employee or applicant for employment shall provide a completed fingerprint card  
289 to the office upon request.
- 290 (c) The office shall require that an individual required to submit to a background check  
291 under this Subsection [~~(17)~~] (18) also provide a signed waiver on a form provided by  
292 the office that meets the requirements of Subsection 53-10-108(4).
- 293 (d) For a noncriminal justice background search and registration in accordance with  
294 Subsection 53-10-108(13), the office shall submit to the Bureau of Criminal  
295 Identification:
- 296 (i) the employee's or applicant's personal identifying information and fingerprints for  
297 a criminal history search of applicable local, regional, and national databases; and
  - 298 (ii) a request for all information received as a result of the local, regional, and  
299 nationwide background check.
- 300 [~~(18)~~] (19) Subject to prioritization of the Legislative Audit Subcommittee, the Office of the

301 Legislative Auditor General shall conduct a feasibility study under Section 53G-3-301.1,  
302 53G-3-301.3, or 53G-3-301.4.

303 Section 2. **Effective Date.**

304 This bill takes effect on May 7, 2025.

305 Section 3. **Coordinating S.B. 154 with S.J.R. 4 if S.J.R. 4 does not pass.**

306 If S.J.R. 4, Joint Resolution Amending Court Rules on Attorney Confidentiality, does  
307 not pass, the Legislature intends that S.B. 154, Legislative Audit Amendments, not be enrolled  
308 and not become law.