

STATE AUDITOR - EXPANSION OF DUTIES

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

This act modifies the functions and duties of the State Auditor. This act provides that the State Auditor may conduct performance and special purpose audits of any entity that receives public funds, clarifies the state auditor's authority to access records, and eliminates certain obsolete requirements. This act makes technical and conforming changes. This act includes a coordination clause.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

62A-15-109, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

62A-15-712, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

63A-3-103, as renumbered and amended by Chapter 212, Laws of Utah 1993

67-3-1, as last amended by Chapter 106, Laws of Utah 1999

67-3-5, Utah Code Annotated 1953

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

Section 1. Section **62A-15-109** is amended to read:

62A-15-109. Responsibilities of the Division of Substance Abuse and Mental Health.

(1) It is the responsibility of the division to assure that the requirements of this part are met and applied uniformly by local substance abuse authorities and local mental health authorities across the state.

(2) Since it is the division's responsibility to contract with, review, approve, and oversee local substance abuse authority plans and local mental health authority plans, and to withhold funds from local substance abuse authorities, local mental health authorities, and public and private providers for contract noncompliance or misuse of public funds, the division

shall:

(a) require each local substance abuse authority and each local mental health authority to submit its plan to the division by May 1 of each year;

(b) conduct an annual program audit and review of each local substance abuse authority in the state and its contract provider and each local mental health authority in the state, and its contract provider; and

(c) provide a written report to the Health and Human Services Interim Committee on July 1, 1999, and each year thereafter, and provide an oral report to that committee, as requested.

That report shall provide information regarding:

(i) the annual audit and review;

(ii) the financial expenditures of each local substance abuse authority and its contract provider and each local mental health authority and its contract provider;

(iii) the status of each local authority's and its contract provider's compliance with its plan, state statutes, and with the provisions of the contract awarded; and

(iv) whether audit guidelines established pursuant to Section 62A-15-110 and Subsection 67-3-1[(2)(a)](10) provide the division with sufficient criteria and assurances of appropriate expenditures of public funds.

(3) The annual audit and review described in Subsection (2)(b) shall, in addition to items determined by the division to be necessary and appropriate, include a review and determination regarding whether public funds allocated to local substance abuse authorities and local mental health authorities are consistent with services rendered and outcomes reported by them or their contract providers, and whether each local substance abuse authority and each local mental health authority is exercising sufficient oversight and control over public funds allocated for substance abuse and mental health programs and services.

(4) The Legislature may refuse to appropriate funds to the division upon the division's failure to comply with the provisions of this part.

Section 2. Section **62A-15-712** is amended to read:

62A-15-712. Responsibilities of the Division of Substance Abuse and Mental

Health.

(1) ~~[It is the responsibility of the]~~ The division ~~[to]~~ shall ensure that the requirements of this part are met and applied uniformly by local mental health authorities across the state.

(2) ~~[Since it is the division's responsibility,]~~ Because the division must, under Section 62A-15-103, ~~[to]~~ contract with, review, approve, and oversee local mental health authority plans, and ~~[to]~~ withhold funds from local mental health authorities and public and private providers for contract noncompliance or misuse of public funds, the division shall:

(a) require each local mental health authority to submit its plan to the division by May 1 of each year; and

(b) conduct an annual program audit and review of each local mental health authority in the state, and its contract provider~~[-and]~~.

(3) (a) The division shall:

~~[(c)]~~ (i) provide a written report to the Health and Human Services Interim Committee ~~[on] by July 1[, 1996, and] of~~ each year ~~[thereafter,];~~ and

(ii) provide an oral report to that committee, as requested.

(b) That report shall provide information regarding:

(i) the annual audit and review;

(ii) the financial expenditures of each local mental health authority and its contract provider;

(iii) the status of each local authority's and its contract provider's compliance with its plan, state statutes, and with the provisions of the contract awarded; and

(iv) whether audit guidelines established ~~[pursuant to]~~ under Subsections 62A-15-713(2)(a) and 67-3-1~~[(2)(c)]~~(10) provide the division with sufficient criteria and assurances of appropriate expenditures of public funds.

~~[(3)]~~ (4) The annual audit and review described in Subsection (2)(b) shall, in addition to items determined by the division to be necessary and appropriate, include a review and determination regarding whether or not:

(a) public funds allocated to local mental health authorities are consistent with services

rendered and outcomes reported by it or its contract provider~~[-];~~ and

~~[whether]~~ (b) each local mental health authority is exercising sufficient oversight and control over public funds allocated for mental health programs and services.

~~[(4)]~~ (5) The Legislature may refuse to appropriate funds to the division ~~[upon]~~ if the ~~[division's failure]~~ division fails to comply with the ~~[provisions of this part]~~ procedures and requirements of this section.

Section 3. Section **63A-3-103** is amended to read:

63A-3-103. Fiscal procedures provided by director of division -- Application to institutions of higher education.

(1) The director of the Division of Finance shall:

- (a) define fiscal procedures relating to approval and allocation of funds;
- (b) provide for the accounting control of funds;
- (c) approve proposed expenditures for the purchase of supplies and services;
- (d) promulgate rules that:
 - (i) establish procedures for maintaining detailed records of all types of leases;
 - (ii) account for all types of leases in accordance with generally accepted accounting principles;
 - (iii) require the performance of a lease with an option to purchase study by state agencies prior to any lease with an option to purchase acquisition of capital equipment; and
 - (iv) require that the completed lease with an option to purchase study be approved by the director of the Division of Finance; and
- (e) prescribe other fiscal functions required by law or under the constitutional authority of the governor to transact all executive business for the state.

(2) (a) Institutions of higher education are subject to the provisions of Title 63A, Chapter 3, ~~[Parts]~~ Part 1, General Provisions, and Part 2, Accounting System, only to the extent expressly authorized or required by the State Board of Regents under Title 53B, State System of Higher Education.

(b) Institutions of higher education shall submit financial data for the past fiscal year

conforming to generally accepted accounting principles to the director of the Division of Finance.

(3) The Division of Finance shall prepare financial statements and other reports in accordance with legal requirements and generally accepted accounting principles for the state auditor's examination and certification:

(a) not later than 60 days after a request from the state auditor; and

(b) at the end of each fiscal year.

Section 4. Section **67-3-1** is amended to read:

67-3-1. Functions and duties.

(1) (a) The state auditor [~~shall be~~] is the auditor of public accounts and [~~as such shall be~~] is independent of any executive or administrative officers of the state.

(b) [~~He~~] The state auditor is not limited in the selection of [~~his~~] personnel or in the determination of the reasonable and necessary expenses of his office.

(2) The state auditor shall [~~-(a)~~] examine and certify annually in respect to each fiscal year, financial statements showing:

(a) the condition of the state's finances[;];

(b) the revenues received or accrued[;];

(c) expenditures paid or accrued[~~, and~~];

(d) the amount of unexpended or unencumbered balances of the appropriations to the agencies, departments, divisions, commissions, and institutions; and

(e) the cash balances of the funds in the custody of the state treasurer. [~~The Division of Finance shall prepare the foregoing financial statements and other reports in accordance with legal requirements and generally-accepted accounting principles for the state auditor's examination and certification, as requested and not later than 60 days following such requests or the end of each fiscal year. The auditor shall file the statements with the governor and the Legislature;~~]

~~[(b)(i)]~~ (3) (a) The state auditor shall:

(i) audit each permanent fund, each special fund, the General Fund, and the accounts of any department of state government or any independent agency or public corporation [on a

~~regular basis] as the law requires, as the auditor [shall determine] determines is necessary, or upon request of the governor or the Legislature[. These audits are to be performed];~~

~~(ii) perform the audits in accordance with generally accepted auditing standards and other auditing procedures as promulgated by recognized authoritative bodies[. The audits shall be conducted];~~

~~(iii) as the auditor determines is necessary, conduct the audits to determine;~~

~~(A) honesty and integrity in fiscal affairs[;];~~

~~(B) accuracy and reliability of financial statements[;];~~

~~(C) effectiveness and adequacy of financial controls[;]; and~~

~~(D) compliance with the law[, as the auditor shall determine necessary;].~~

~~[(ii) in the event that] (b) If any state entity receives federal funding, the state auditor shall ensure that the audit [shall be] is performed in accordance with federal audit requirements [under the direction of the state auditor].~~

~~(c) (i) The costs of the federal compliance portion of the audit may be paid from an appropriation to the state auditor from the General Fund.~~

~~(ii) If an appropriation is not provided, or if the federal government does not specifically provide for payment of audit costs, the costs of the federal compliance portions of the audit shall be allocated on the basis of the percentage that each state entity's federal funding bears to the total federal funds received by the state.~~

~~(iii) The allocation shall be adjusted to reflect any reduced audit time required to audit funds passed through the state to local governments and to reflect any reduction in audit time obtained through the use of internal auditors working under the direction of the state auditor[;].~~

~~[(c) present to the governor on October 1st of each year and to the Legislature on the first day of each annual general session, a statement of his appropriation expenditures segregated as to cost of salaries, travel, office and other expenses, and capital outlay for equipment, together with his recommendations as to new legislation and a complete record of the accomplishments of his office for the preceding year;]~~

~~[(d) issue subpoenas requiring any person who has had financial transactions with the~~

~~state to appear before him and to answer under oath, orally or in writing, as to any facts concerning these transactions; and for the purpose of obtaining any such facts the state auditor is empowered to administer oaths;]~~

(4) (a) Except as provided in Subsection (4)(b), the state auditor shall, in addition to financial audits, and as the auditor determines is necessary, conduct performance and special purpose audits, examinations, and reviews of any entity that receives public funds, including a determination of any or all of the following:

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

(ii) whether or not its administrators have faithfully complied with legislative intent;

(iii) whether or not its operations have been conducted in an efficient, effective, and cost-efficient manner;

(iv) whether or not its programs have been effective in accomplishing the intended objectives; and

(v) whether or not its management, control, and information systems are adequate and effective.

(b) The auditor may not conduct performance and special purpose audits, examinations, and reviews of any entity that receives public funds if the entity:

(i) has an elected auditor; and

(ii) has, within the entity's last budget year, had its financial statements or performance formally reviewed by another outside auditor.

(5) The state auditor shall administer any oath or affirmation necessary to the performance of the duties of the auditor's office, and may subpoena witnesses and documents, whether electronic or otherwise, and examine into any matter that the auditor considers necessary.

~~[(e)]~~ (6) The state auditor may require[; in his discretion,] all persons who have had the disposition or management of any property of this state or its political subdivisions to [render] submit statements regarding it [to him, and each of these persons must render the statements] at [such times] the time and in [such] the form [as] that the auditor [may require;] requires.

(7) The state auditor shall:

~~[(f)]~~ (a) except where otherwise provided by law, institute suits in Salt Lake County in relation to the assessment, collection, and payment of its revenues against:

(i) persons who by any means have become entrusted with public monies or property and have failed to pay over or deliver ~~[the same]~~ those monies or property; and ~~[against]~~

(ii) all debtors of the state~~[-, all of which suits of the courts of the county in which the seat of government may be located shall have jurisdiction without regard to the residence of the defendants];~~

~~[(g)]~~ authenticate with his official seal all copies of papers issued from his office as he considers necessary;

~~[(h)]~~ (b) collect and pay into the state treasury all fees received by ~~[him]~~ the state auditor;

~~[(i)]~~ (c) perform the duties of a member of all boards of which ~~[he]~~ the state auditor is ~~[or may be made]~~ a member by the constitution or laws of the state, and ~~[such]~~ any other duties ~~[as]~~ that are prescribed by the constitution and by law;

~~[(j)]~~ (d) stop the payment of the salary of any state official or state employee who:

(i) refuses to settle ~~[his]~~ accounts or ~~[render such]~~ provide required statements ~~[as may be required with respect to]~~ about the custody and disposition of public funds or other state property ~~[or who]~~;

(ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling board or department head with respect to the manner of keeping prescribed accounts or funds; or ~~[who]~~

(iii) fails to correct any delinquencies, improper procedures, and errors brought to ~~[his]~~ the official's or employee's attention;

~~[(k)]~~ (e) establish accounting systems, methods, and forms for public accounts in all taxing or fee-assessing units of the state in the interest of uniformity, efficiency, and economy;

~~[(l)]~~ (f) superintend the contractual auditing of all state accounts;

~~[(m)]~~ (g) subject to Subsection (8), withhold state allocated funds or the disbursement of property taxes from any state taxing or fee-assessing unit, if necessary, to ensure that officials

and employees in those taxing units of the state comply with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds~~[- Except as otherwise specified in the law, funds may not be withheld until a taxing unit has received formal written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections;];~~
and

~~[(~~n~~) (h) subject to Subsection (9), withhold the disbursement of tax monies from any county, if necessary, to ensure that officials and employees in the county comply with Section 59-2-303.1. [For purposes of this subsection, funds may not be withheld until a county has received formal written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections; and]~~

(8) Except as otherwise provided by law, the state auditor may not withhold funds under Subsection (7)(g) until a taxing or fee-assessing unit has received formal written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections.

(9) The state auditor may not withhold funds under Subsection (7)(h) until a county has received formal written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections.

~~[(~~o~~) (10) The state auditor shall:~~

(a) establish audit guidelines and procedures for audits of local mental health and substance abuse authorities and their contract providers, conducted pursuant to Title 17A, Chapter 3, Parts 6 and 7, Title 62A, [Chapters 8 and 12] Chapter 15, and Title 51, Chapter 2[- Those]; and

(b) ensure that those guidelines and procedures [shall be established for the purpose of providing] provide assurances to the state that:

(i) state and federal funds appropriated to local mental health authorities are used for mental health purposes;

(ii) a private provider under an annual or otherwise ongoing contract to provide comprehensive mental health programs or services for a local mental health authority is in compliance with state and local contract requirements, and state and federal law;

(iii) state and federal funds appropriated to local substance abuse authorities are used for substance abuse programs and services; and

(iv) a private provider under an annual or otherwise ongoing contract to provide comprehensive substance abuse programs or services for a local substance abuse authority is in compliance with state and local contract requirements, and state and federal law.

(11) The state auditor may, in accordance with the auditor's responsibilities for political subdivisions of the state as provided in Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities, initiate audits or investigations of any political subdivision that are necessary to determine honesty and integrity in fiscal affairs, accuracy and reliability of financial statements, effectiveness, and adequacy of financial controls and compliance with the law.

~~(3)~~ (12) (a) The state auditor may not audit work ~~he~~ that the state auditor performed before becoming state auditor. ~~In the event that~~

(b) If the state auditor has previously been a responsible official in state government whose work has not yet been audited, the Legislature shall:

(i) designate how ~~such~~ that work shall be audited; and ~~shall~~

(ii) provide additional funding for ~~such~~ those audits, if necessary.

~~(4)~~ (13) (a) The following records in the custody or control of the state auditor ~~shall be~~ are protected records under Title 63, Chapter 2, Government Records Access and Management Act:

~~(a)~~ (i) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a past or present governmental employee if the information or allegation cannot be corroborated by the state auditor through other documents or evidence, and the records relating to the allegation are not relied upon by the state auditor in preparing a final audit report;

~~(b)~~ (ii) records and audit workpapers to the extent they would disclose the identity of a person who during the course of an audit, communicated the existence of any waste of public funds, property, or manpower, or a violation or suspected violation of a law, rule, or regulation

adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;

~~[(e) prior to the time that]~~ (iii) before an audit is completed and the final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for their response or information;

~~[(d)]~~ (iv) records that would disclose an outline or part of any audit survey plans or audit program; and

~~[(e)]~~ (v) requests for audits, if disclosure would risk circumvention of an audit[;].

~~[(f) the]~~ (b) The provisions of Subsections ~~[(a), (b), and (c)]~~ (13)(a)(i), (ii), and (iii) do not prohibit the disclosure of records or information that relate to a violation of the law by a governmental entity or employee to a government prosecutor or peace officer[; ~~and~~].

~~[(g) the]~~ (c) The provisions of this ~~[section]~~ Subsection (13) do not limit the authority otherwise given to the state auditor to classify a document as public, private, controlled, or protected under Title 63, Chapter 2, Government Records Access and Management Act.

Section 5. Section **67-3-5** is amended to read:

67-3-5. Right of visitation and examination.

~~[The]~~ For the purpose of carrying out the duties of the state auditor, the state auditor shall have access to all [state] offices of public entities during business hours for the inspection of [such books, papers and accounts thereof as may concern his duties] their records, regardless of any general limitation on access to records provided in an entity's individual statute.

Section 6. **Coordination clause.**

If this bill and H.B. 44, Substance Abuse and Mental Health Amendments, both pass, it is the intent of the Legislature that the cross reference in H.B. 44, Subsection 62A-15-103(2)(g)(iv) to "Subsection 67-3-1(2)(o)" be replaced with "Subsection 67-3-1(10)".