

1 **OFFICE OF LEGISLATIVE AUDITOR -**

2 **ACCESS TO INFORMATION**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Michael G. Waddoups**

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the powers and duties of the Office of Legislative Auditor General.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ clarifies that the Legislative Auditor General may access the records, documents,
13 and reports of any entity that receives public funds; and

14 ▶ allows the Legislative Auditor General to use the legislative subpoena powers to
15 access those records when necessary.

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 **AMENDS:**

22 **36-12-15**, as last amended by Chapters 82 and 225, Laws of Utah 2000

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

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

26 **36-12-15. Office of Legislative Auditor General established -- Qualifications --**
27 **Powers, functions, and duties.**



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

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

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

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

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

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

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

43 (iii) as provided in Section 36-24-101:

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

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

48 (I) policies;

49 (II) performance measures; and

50 (III) data collection;

51 (C) send each new program and agency:

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

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

56 (D) (I) using the new program or agency's response to the self evaluation survey
57 instruments, recommend to the legislative audit subcommittee that the office conduct an audit
58 of those new programs and agencies created on which questions have arisen as a result of the

59 response to the survey instrument and provide a limited scope audit report on those new
60 programs or agencies on which it receives direction to audit to the legislative interim
61 committee and to the legislative appropriations subcommittee with oversight responsibility for
62 that program or agency on or before the November interim meeting; and

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

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

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

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

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

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

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

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

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

78 (6) The Office of Legislative Auditor General may:

79 (a) (i) notwithstanding any other provision of law, obtain access to all records,
80 documents, and reports of any entity that receives public funds that are necessary to the scope
81 of its duties[~~, according to~~]; and

82 (ii) if necessary, issue a subpoena to obtain access as provided in Subsection (6)(a)(i)
83 using the procedures contained in Title 36, Chapter 14, Legislative Subpoena Powers;

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

86 (c) prepare and submit each audit report without interference from any source relative
87 to the content of the report, the conclusions reached in the report, or the manner of disclosing
88 the results of his findings; and

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

- 90 (7) To preserve the professional integrity and independence of the office:
91 (a) no legislator or public official may urge the appointment of any person to the office;
92 and
93 (b) the legislative auditor general may not be appointed to serve on any board,
94 authority, commission, or other agency of the state during his term as legislative auditor
95 general.
- 96 (8) The following records in the custody or control of the legislative auditor general
97 shall be protected records under Title 63, Chapter 2, Government Records Access and
98 Management Act:
- 99 (a) Records that would disclose information relating to allegations of personal
100 misconduct, gross mismanagement, or illegal activity of a past or present governmental
101 employee if the information or allegation cannot be corroborated by the legislative auditor
102 general through other documents or evidence, and the records relating to the allegation are not
103 relied upon by the legislative auditor general in preparing a final audit report.
- 104 (b) Records and audit workpapers to the extent they would disclose the identity of a
105 person who during the course of a legislative audit, communicated the existence of any waste
106 of public funds, property, or manpower, or a violation or suspected violation of a law, rule, or
107 regulation adopted under the laws of this state, a political subdivision of the state, or any
108 recognized entity of the United States, if the information was disclosed on the condition that
109 the identity of the person be protected.
- 110 (c) Prior to the time that an audit is completed and the final audit report is released,
111 records or drafts circulated to a person who is not an employee or head of a governmental
112 entity for their response or information.
- 113 (d) Records that would disclose an outline or part of any audit survey plans or audit
114 program.
- 115 (e) Requests for audits, if disclosure would risk circumvention of an audit.
- 116 (f) The provisions of Subsections (8)(a), (b), and (c) do not prohibit the disclosure of
117 records or information that relate to a violation of the law by a governmental entity or
118 employee to a government prosecutor or peace officer.
- 119 (g) The provisions of this section do not limit the authority otherwise given to the
120 legislative auditor general to classify a document as public, private, controlled, or protected

121 under Title 63, Chapter 2, Government Records Access and Management Act.

122 (9) The legislative auditor general shall:

123 (a) be available to the Legislature and to its committees for consultation on matters
124 relevant to areas of his professional competence and shall perform, or otherwise assist in the
125 performance of, a health insurance provision review as provided in Section 36-12-5;

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

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

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

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

137 (10) (a) Prior to each annual general session, the legislative auditor general shall
138 prepare a summary of the audits conducted and of actions taken based upon them during the
139 preceding year.

140 (b) This report shall also set forth any items and recommendations that are important
141 for consideration in the forthcoming session, together with a brief statement or rationale for
142 each item or recommendation.

143 (c) The legislative auditor general shall deliver the report to the Legislature and to the
144 appropriate committees of the Legislature.

145 (11) (a) No person or entity may:

146 (i) interfere with a legislative audit, examination, or review of any entity conducted by
147 the office; or

148 (ii) interfere with the office relative to the content of the report, the conclusions
149 reached in the report, or the manner of disclosing the results and findings of the office.

150 (b) Any person or entity that violates the provisions of this Subsection (11) is guilty of
151 a class B misdemeanor.

Legislative Review Note
as of 12-7-04 8:41 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-09-04 8:14 AM

The Government Operations Interim Committee recommended this bill.

Fiscal Note
Bill Number SB0020

Office of Legislative Auditor - Access to Information

14-Jan-05

2:20 PM

State Impact

Provisions of this bill can be handled within existing budgets.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst