

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **36-12-8**, as last amended by Laws of Utah 2001, Chapter 9

31 **36-12-15**, as last amended by Laws of Utah 2008, Chapters 142 and 382

32 **67-3-1**, as last amended by Laws of Utah 2011, Chapter 342



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

35 Section 1. Section **36-12-8** is amended to read:

36 **36-12-8. Legislative Management Committee -- Research and General Counsel**
37 **Subcommittee -- Budget Subcommittee -- Audit Subcommittee -- Duties -- Members --**
38 **Meetings.**

39 (1) There is created within the Legislative Management Committee three
40 subcommittees having equal representation from each major political party. The
41 subcommittees, their membership, and their functions are as follows:

42 (a) The Research and General Counsel Subcommittee, comprising six members, shall
43 recommend to the Legislative Management Committee a person or persons to hold the
44 positions of director of the Office of Legislative Research and General Counsel and legislative
45 general counsel.

46 (b) The Budget Subcommittee, comprising six members, shall recommend to the
47 Legislative Management Committee a person to hold the position of legislative fiscal analyst.

48 (c) The Audit Subcommittee, comprising four members, shall:

49 (i) recommend to the Legislative Management Committee a person to hold the position
50 of legislative auditor general; and

51 (ii) (A) review all requests for audits;

52 (B) prioritize those requests; [~~and~~]

53 (C) hear all audit reports and refer those reports to other legislative committees for
54 their further review and action as appropriate[-]; and

55 (D) when notified by the legislative auditor general or state auditor that a subsequent
56 audit has found that an entity has not implemented a previous audit recommendation, refer the
57 audit report to an appropriate legislative committee and also ensure that an appropriate
58 legislative committee conducts a review of the entity that has not implemented the previous

59 audit recommendation.

60 (2) The members of each subcommittee of the Legislative Management Committee
61 shall be appointed from the membership of the Legislative Management Committee by an
62 appointments committee comprised of the speaker and the minority leader of the House of
63 Representatives and the president and the minority leader of the Senate.

64 (3) Each subcommittee of the Legislative Management Committee shall meet as often
65 as necessary to perform its duties. They may meet during and between legislative sessions.

66 Section 2. Section **36-12-15** is amended to read:

67 **36-12-15. Office of Legislative Auditor General established -- Qualifications --**
68 **Powers, functions, and duties.**

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

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

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

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

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

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

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

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

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

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

89 (I) policies;

90 (II) performance measures; and

91 (III) data collection;

92 (C) send each new program and agency:

93 (I) within one year after its creation, a survey instrument requesting a self evaluation

94 that includes policies, performance measures, and data collection; and

95 (II) within two years after its creation, a survey instrument requesting a self evaluation

96 that includes policies, performance measures, and data collection; and

97 (D) (I) using the new program or agency's response to the self evaluation survey

98 instruments, recommend to the legislative audit subcommittee that the office conduct an audit

99 of those new programs and agencies created on which questions have arisen as a result of the

100 response to the survey instrument and provide a limited scope audit report on those new

101 programs or agencies on which it receives direction to audit to the legislative interim

102 committee and to the legislative appropriations subcommittee with oversight responsibility for

103 that program or agency on or before the November interim meeting; and

104 (II) include within this limited scope audit report a recommendation as to whether the

105 program or agency is fulfilling its statutory guidelines and directives.

106 (5) The audit, examination, or review of any entity that receives public funds may

107 include a determination of any or all of the following:

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

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

110 (c) whether or not its financial controls are adequate and effective to properly record

111 and safeguard its acquisition, custody, use, and accounting of public funds;

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

113 (e) whether or not its operations have been conducted in an efficient, effective, and cost

114 efficient manner;

115 (f) whether or not its programs have been effective in accomplishing intended

116 objectives; and

117 (g) whether or not its management control and information systems are adequate and

118 effective.

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

120 (a) (i) notwithstanding any other provision of law, obtain access to all records,

121 documents, and reports of any entity that receives public funds that are necessary to the scope
122 of its duties; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

163 (9) The legislative auditor general shall:

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

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

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

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

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

177 (10) If the legislative auditor general conducts an audit of a state agency that has
178 previously been audited and finds that the state agency has not implemented a recommendation
179 made by the legislative auditor general in a previous audit, the legislative auditor general shall,
180 upon release of the audit:

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

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

186 ~~[(10)]~~ (11) (a) Prior to each annual general session, the legislative auditor general shall
187 prepare a summary of the audits conducted and of actions taken based upon them during the
188 preceding year.

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

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

194 ~~[(11)]~~ (12) (a) No person or entity may:

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

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

199 (b) Any person or entity that violates the provisions of this Subsection ~~[(11)]~~ (12) is
200 guilty of a class B misdemeanor.

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

202 **67-3-1. Functions and duties.**

203 (1) (a) The state auditor is the auditor of public accounts and is independent of any
204 executive or administrative officers of the state.

205 (b) The state auditor is not limited in the selection of personnel or in the determination
206 of the reasonable and necessary expenses of the state auditor's office.

207 (2) The state auditor shall examine and certify annually in respect to each fiscal year,
208 financial statements showing:

209 (a) the condition of the state's finances;

210 (b) the revenues received or accrued;

211 (c) expenditures paid or accrued;

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

- 214 (e) the cash balances of the funds in the custody of the state treasurer.
- 215 (3) (a) The state auditor shall:
- 216 (i) audit each permanent fund, each special fund, the General Fund, and the accounts of
- 217 any department of state government or any independent agency or public corporation as the law
- 218 requires, as the auditor determines is necessary, or upon request of the governor or the
- 219 Legislature;
- 220 (ii) perform the audits in accordance with generally accepted auditing standards and
- 221 other auditing procedures as promulgated by recognized authoritative bodies;
- 222 (iii) as the auditor determines is necessary, conduct the audits to determine:
- 223 (A) honesty and integrity in fiscal affairs;
- 224 (B) accuracy and reliability of financial statements;
- 225 (C) effectiveness and adequacy of financial controls; and
- 226 (D) compliance with the law.
- 227 (b) If any state entity receives federal funding, the state auditor shall ensure that the
- 228 audit is performed in accordance with federal audit requirements.
- 229 (c) (i) The costs of the federal compliance portion of the audit may be paid from an
- 230 appropriation to the state auditor from the General Fund.
- 231 (ii) If an appropriation is not provided, or if the federal government does not
- 232 specifically provide for payment of audit costs, the costs of the federal compliance portions of
- 233 the audit shall be allocated on the basis of the percentage that each state entity's federal funding
- 234 bears to the total federal funds received by the state.
- 235 (iii) The allocation shall be adjusted to reflect any reduced audit time required to audit
- 236 funds passed through the state to local governments and to reflect any reduction in audit time
- 237 obtained through the use of internal auditors working under the direction of the state auditor.
- 238 (4) (a) Except as provided in Subsection (4)(b), the state auditor shall, in addition to
- 239 financial audits, and as the auditor determines is necessary, conduct performance and special
- 240 purpose audits, examinations, and reviews of any entity that receives public funds, including a
- 241 determination of any or all of the following:
- 242 (i) the honesty and integrity of all its fiscal affairs;
- 243 (ii) whether or not its administrators have faithfully complied with legislative intent;
- 244 (iii) whether or not its operations have been conducted in an efficient, effective, and

245 cost-efficient manner;

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

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

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

252 (i) has an elected auditor; and

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

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

259 (6) The state auditor may require all persons who have had the disposition or
260 management of any property of this state or its political subdivisions to submit statements
261 regarding it at the time and in the form that the auditor requires.

262 (7) The state auditor shall:

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

265 (i) persons who by any means have become entrusted with public money or property
266 and have failed to pay over or deliver the money or property; and

267 (ii) all debtors of the state;

268 (b) collect and pay into the state treasury all fees received by the state auditor;

269 (c) perform the duties of a member of all boards of which the state auditor is a member
270 by the constitution or laws of the state, and any other duties that are prescribed by the
271 constitution and by law;

272 (d) stop the payment of the salary of any state official or state employee who:

273 (i) refuses to settle accounts or provide required statements about the custody and
274 disposition of public funds or other state property;

275 (ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling

276 board or department head with respect to the manner of keeping prescribed accounts or funds;
277 or

278 (iii) fails to correct any delinquencies, improper procedures, and errors brought to the
279 official's or employee's attention;

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

282 (f) superintend the contractual auditing of all state accounts;

283 (g) subject to Subsection (8), withhold state allocated funds or the disbursement of
284 property taxes from any state taxing or fee-assessing unit, if necessary, to ensure that officials
285 and employees in those taxing units of the state comply with state laws and procedures in the
286 budgeting, expenditures, and financial reporting of public funds; and

287 (h) subject to Subsection (9), withhold the disbursement of tax money from any county,
288 if necessary, to ensure that officials and employees in the county comply with Section
289 59-2-303.1.

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

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

297 (10) The state auditor shall:

298 (a) establish audit guidelines and procedures for audits of local mental health and
299 substance abuse authorities and their contract providers, conducted pursuant to Title 17,
300 Chapter 43, Parts 2, Local Substance Abuse Authorities and 3, Local Mental Health
301 Authorities, Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal
302 Organizations, and Other Local Entities Act, and Title 62A, Chapter 15, Substance Abuse and
303 Mental Health Act; and

304 (b) ensure that those guidelines and procedures provide assurances to the state that:

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

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

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

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

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

321 (12) (a) The state auditor may not audit work that the state auditor performed before
322 becoming state auditor.

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

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

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

327 (13) The state auditor shall:

328 (a) with the assistance, advice, and recommendations of an advisory committee
329 appointed by the state auditor from among local district boards of trustees, officers, and
330 employees and special service district boards, officers, and employees:

331 (i) prepare a Uniform Accounting Manual for Local Districts that:

332 (A) prescribes a uniform system of accounting and uniform budgeting and reporting
333 procedures for local districts under Title 17B, Limited Purpose Local Government Entities -
334 Local Districts, and special service districts under Title 17D, Chapter 1, Special Service
335 District Act;

336 (B) conforms with generally accepted accounting principles; and

337 (C) prescribes reasonable exceptions and modifications for smaller districts to the

338 uniform system of accounting, budgeting, and reporting;

339 (ii) maintain the manual under Subsection (13)(a) so that it continues to reflect
340 generally accepted accounting principles;

341 (iii) conduct a continuing review and modification of procedures in order to improve
342 them;

343 (iv) prepare and supply each district with suitable budget and reporting forms; and

344 (v) prepare instructional materials, conduct training programs, and render other

345 services considered necessary to assist local districts and special service districts in

346 implementing the uniform accounting, budgeting, and reporting procedures; and

347 (b) continually analyze and evaluate the accounting, budgeting, and reporting practices
348 and experiences of specific local districts and special service districts selected by the state
349 auditor and make the information available to all districts.

350 (14) (a) The following records in the custody or control of the state auditor are
351 protected records under Title 63G, Chapter 2, Government Records Access and Management
352 Act:

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

358 (ii) records and audit workpapers to the extent they would disclose the identity of a
359 person who during the course of an audit, communicated the existence of any waste of public
360 funds, property, or manpower, or a violation or suspected violation of a law, rule, or regulation
361 adopted under the laws of this state, a political subdivision of the state, or any recognized entity
362 of the United States, if the information was disclosed on the condition that the identity of the
363 person be protected;

364 (iii) before an audit is completed and the final audit report is released, records or drafts
365 circulated to a person who is not an employee or head of a governmental entity for their
366 response or information;

367 (iv) records that would disclose an outline or part of any audit survey plans or audit
368 program; and

369 (v) requests for audits, if disclosure would risk circumvention of an audit.

370 (b) The provisions of Subsections (14)(a)(i), (ii), and (iii) do not prohibit the disclosure
371 of records or information that relate to a violation of the law by a governmental entity or
372 employee to a government prosecutor or peace officer.

373 (c) The provisions of this Subsection (14) do not limit the authority otherwise given to
374 the state auditor to classify a document as public, private, controlled, or protected under Title
375 63G, Chapter 2, Government Records Access and Management Act.

376 (15) If the state auditor conducts an audit of an entity that the state auditor has
377 previously audited and finds that the entity has not implemented a recommendation made by
378 the state auditor in a previous audit, the state auditor shall notify the Legislative Management
379 Committee through its audit subcommittee that the entity has not implemented that
380 recommendation.

Legislative Review Note
as of 2-16-12 5:49 PM

Office of Legislative Research and General Counsel