

1 **STATE AUDITOR FISCAL AUDITING AND**
2 **REPORTING AMENDMENTS**

3 2017 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Curtis S. Bramble**

6 House Sponsor: Steve Eliason

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions related to fiscal reporting requirements to the state auditor
11 and auditing duties of the state auditor.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ amends the threshold for certain accounting reports;
- 15 ▶ amends the threshold for different levels of review for certain nonprofit
16 corporations' financial information;
- 17 ▶ authorizes the state auditor to seek judicial relief to take temporary custody of
18 public funds if the state auditor determines an action is necessary to protect public
19 funds from being improperly diverted from their intended public purpose;
- 20 ▶ provides that the state treasurer may take temporary custody of public funds if
21 ordered by a court to do so; and
- 22 ▶ makes technical corrections.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 This bill provides a special effective date.

27 **Utah Code Sections Affected:**

28 AMENDS:

- 29 **17B-1-641**, as last amended by Laws of Utah 2014, Chapter 377
- 30 **51-2a-201**, as last amended by Laws of Utah 2015, Chapter 138
- 31 **51-2a-201.5**, as enacted by Laws of Utah 2015, Chapter 138
- 32 **63G-2-502**, as last amended by Laws of Utah 2015, Chapter 174
- 33 **67-3-1**, as last amended by Laws of Utah 2015, Chapter 174
- 34 **67-4-1**, as last amended by Laws of Utah 1998, Chapter 14

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

37 Section 1. Section **17B-1-641** is amended to read:

38 **17B-1-641. Local district may expand uniform procedures -- Limitation.**

39 (1) Subject to Subsection (2), a local district may expand the uniform accounting,
40 budgeting, and reporting procedure prescribed in the Uniform Accounting Manual for Local
41 Districts prepared by the state auditor under Subsection ~~67-3-1(14)~~(15), to better serve the
42 needs of the district.

43 (2) A local district may not deviate from or alter the basic prescribed classification
44 systems for the identity of funds and accounts set forth in the Uniform Accounting Manual for
45 Local Districts.

46 Section 2. Section **51-2a-201** is amended to read:

47 **51-2a-201. Accounting reports required.**

48 (1) The governing board of an entity whose revenues or expenditures of all funds is
49 ~~[\$750,000]~~ \$1,000,000 or more shall cause an audit to be made of its accounts by a competent
50 certified public accountant.

51 (2) The governing board of an entity whose revenues or expenditures of all funds is
52 less than ~~[\$750,000]~~ \$1,000,000 shall cause a financial report to be made in the manner
53 prescribed by the state auditor.

54 Section 3. Section **51-2a-201.5** is amended to read:

55 **51-2a-201.5. Accounting reports required -- Reporting to state auditor.**

56 (1) As used in this section:

57 (a) (i) "Federal pass through money" means federal money received by a nonprofit
58 corporation through a subaward or contract from the state or a political subdivision.

59 (ii) "Federal pass through money" does not include federal money received by a
60 nonprofit corporation as payment for goods or services purchased by the state or political
61 subdivision from the nonprofit corporation.

62 (b) (i) "Local money" means money that is owned, held, or administered by a political
63 subdivision of the state that is derived from fee or tax revenues.

64 (ii) "Local money" does not include:

65 (A) money received by a nonprofit corporation as payment for goods or services
66 purchased from the nonprofit corporation; or

67 (B) contributions or donations received by the political subdivision.

68 (c) (i) "State money" means money that is owned, held, or administered by a state
69 agency and derived from state fee or tax revenues.

70 (ii) "State money" does not include:

71 (A) money received by a nonprofit corporation as payment for goods or services
72 purchased from the nonprofit corporation; or

73 (B) contributions or donations received by the state agency.

74 (2) (a) The governing board of a nonprofit corporation whose revenues or expenditures
75 of federal pass through money, state money, and local money is [~~\$750,000~~] \$1,000,000 or more
76 shall cause an audit to be made of its accounts by an independent certified public accountant.

77 (b) The governing board of a nonprofit corporation whose revenues or expenditures of
78 federal pass through money, state money, and local money is at least \$350,000 but less than
79 [~~\$750,000~~] \$1,000,000 shall cause a review to be made of its accounts by an independent
80 certified public accountant.

81 (c) The governing board of a nonprofit corporation whose revenues or expenditures of
82 federal pass through money, state money, and local money is at least \$100,000 but less than

83 \$350,000 shall cause a compilation to be made of its accounts by an independent certified
84 public accountant.

85 (d) The governing board of a nonprofit corporation whose revenues or expenditures of
86 federal pass through money, state money, and local money is less than \$100,000 but greater
87 than \$25,000 shall cause a fiscal report to be made in a format prescribed by the state auditor.

88 (3) A nonprofit corporation described in Subsection 51-2a-102(6)(f) shall provide the
89 state auditor a copy of an accounting report prepared under this section within six months of
90 the end of the nonprofit corporation's fiscal year.

91 (4) (a) A state agency that disburses federal pass through money or state money to a
92 nonprofit corporation shall enter into a written agreement with the nonprofit corporation that
93 requires the nonprofit corporation to annually disclose whether:

94 (i) the nonprofit corporation met or exceeded the dollar amounts listed in Subsection
95 (2) in the previous fiscal year of the nonprofit corporation; or

96 (ii) the nonprofit corporation anticipates meeting or exceeding the dollar amounts listed
97 in Subsection (2) in the fiscal year the money is disbursed.

98 (b) If the nonprofit corporation discloses to the state agency that the nonprofit
99 corporation meets or exceeds the dollar amounts as described in Subsection (4)(a), the state
100 agency shall notify the state auditor.

101 (5) This section does not apply to a nonprofit corporation that is a charter school
102 created under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act. A charter school is
103 subject to the requirements of Section 53A-1a-507.

104 (6) A nonprofit corporation is exempt from Section 51-2a-201.

105 Section 4. Section 63G-2-502 is amended to read:

106 **63G-2-502. State Records Committee -- Duties.**

107 (1) The records committee shall:

108 (a) meet at least once every three months;

109 (b) review and approve schedules for the retention and disposal of records;

- 110 (c) hear appeals from determinations of access as provided by Section 63G-2-403;
- 111 (d) determine disputes submitted by the state auditor under Subsection
- 112 67-3-1~~(15)~~(16)(d); and
- 113 (e) appoint a chairman from among its members.
- 114 (2) The records committee may:
 - 115 (a) make rules to govern its own proceedings as provided by Title 63G, Chapter 3,
 - 116 Utah Administrative Rulemaking Act; and
 - 117 (b) by order, after notice and hearing, reassign classification and designation for any
 - 118 record series by a governmental entity if the governmental entity's classification or designation
 - 119 is inconsistent with this chapter.
 - 120 (3) The records committee shall annually appoint an executive secretary to the records
 - 121 committee. The executive secretary may not serve as a voting member of the committee.
 - 122 (4) Five members of the records committee are a quorum for the transaction of
 - 123 business.
 - 124 (5) The state archives shall provide staff and support services for the records
 - 125 committee.
 - 126 (6) If the records committee reassigns the classification or designation of a record or
 - 127 record series under Subsection (2)(b), any affected governmental entity or any other interested
 - 128 person may appeal the reclassification or redesignation to the district court. The district court
 - 129 shall hear the matter de novo.
 - 130 (7) The Office of the Attorney General shall provide counsel to the records committee
 - 131 and shall review proposed retention schedules.
- 132 Section 5. Section 67-3-1 is amended to read:
 - 133 **67-3-1. Functions and duties.**
 - 134 (1) (a) The state auditor is the auditor of public accounts and is independent of any
 - 135 executive or administrative officers of the state.
 - 136 (b) The state auditor is not limited in the selection of personnel or in the determination

137 of the reasonable and necessary expenses of the state auditor's office.

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

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

141 (b) the revenues received or accrued;

142 (c) expenditures paid or accrued;

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

145 (e) the cash balances of the funds in the custody of the state treasurer.

146 (3) (a) The state auditor shall:

147 (i) audit each permanent fund, each special fund, the General Fund, and the accounts of
148 any department of state government or any independent agency or public corporation as the law
149 requires, as the auditor determines is necessary, or upon request of the governor or the
150 Legislature;

151 (ii) perform the audits in accordance with generally accepted auditing standards and
152 other auditing procedures as promulgated by recognized authoritative bodies;

153 (iii) as the auditor determines is necessary, conduct the audits to determine:

154 (A) honesty and integrity in fiscal affairs;

155 (B) accuracy and reliability of financial statements;

156 (C) effectiveness and adequacy of financial controls; and

157 (D) compliance with the law.

158 (b) If any state entity receives federal funding, the state auditor shall ensure that the
159 audit is performed in accordance with federal audit requirements.

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

162 (ii) If an appropriation is not provided, or if the federal government does not
163 specifically provide for payment of audit costs, the costs of the federal compliance portions of

164 the audit shall be allocated on the basis of the percentage that each state entity's federal funding
165 bears to the total federal funds received by the state.

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

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

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

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

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

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

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

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

183 (i) has an elected auditor; and

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

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

190 (6) The state auditor may require all persons who have had the disposition or

191 management of any property of this state or its political subdivisions to submit statements
192 regarding it at the time and in the form that the auditor requires.

193 (7) The state auditor shall:

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

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

198 (ii) all debtors of the state;

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

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

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

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

206 (ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling
207 board or department head with respect to the manner of keeping prescribed accounts or funds;
208 or

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

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

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

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

218 (h) subject to Subsection (9), withhold the disbursement of tax money from any county,
219 if necessary, to ensure that officials and employees in the county comply with Section
220 59-2-303.1.

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

225 (b) If, after receiving notice under Subsection (8)(a), a state or independent local
226 fee-assessing unit that exclusively assesses fees has not made corrections to comply with state
227 laws and procedures in the budgeting, expenditures, and financial reporting of public funds, the
228 state auditor:

229 (i) shall provide a recommended timeline for corrective actions; and

230 (ii) may prohibit the state or local fee-assessing unit from accessing money held by the
231 state; and

232 (iii) may prohibit a state or local fee-assessing unit from accessing money held in an
233 account of a financial institution by filing an action in district court requesting an order of the
234 court to prohibit a financial institution from providing the fee-assessing unit access to an
235 account.

236 (c) The state auditor shall remove a limitation on accessing funds under Subsection
237 (8)(b) upon compliance with state laws and procedures in the budgeting, expenditures, and
238 financial reporting of public funds.

239 (d) If a local taxing or fee-assessing unit has not adopted a budget in compliance with
240 state law, the state auditor:

241 (i) shall provide notice to the taxing or fee-assessing unit of the unit's failure to
242 comply;

243 (ii) may prohibit the taxing or fee-assessing unit from accessing money held by the
244 state; and

245 (iii) may prohibit a taxing or fee-assessing unit from accessing money held in an
246 account of a financial institution by:

247 (A) contacting the taxing or fee-assessing unit's financial institution and requesting that
248 the institution prohibit access to the account; or

249 (B) filing an action in district court requesting an order of the court to prohibit a
250 financial institution from providing the taxing or fee-assessing unit access to an account.

251 (e) If the local taxing or fee-assessing unit adopts a budget in compliance with state
252 law, the state auditor shall eliminate a limitation on accessing funds described in Subsection
253 (8)(d).

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

257 (10) Notwithstanding Subsection (7)(g), (7)(h), (8)(b), or (8)(d) the state auditor:

258 (a) shall authorize a disbursement by a state or local taxing or fee-assessing unit if the
259 disbursement is necessary to:

260 (i) avoid a major disruption in the operations of the state or local taxing or
261 fee-assessing unit; or

262 (ii) meet debt service obligations; and

263 (b) may authorize a disbursement by a state or local taxing or fee-assessing unit as the
264 state auditor determines is appropriate.

265 (11) (a) The state auditor may seek relief under the Utah Rules of Civil Procedure to
266 take temporary custody of public funds if an action is necessary to protect public funds from
267 being improperly diverted from their intended public purpose.

268 (b) If the state auditor seeks relief under Subsection (11)(a):

269 (i) the state auditor is not required to exhaust the procedures in Subsection (7) or (8);

270 and

271 (ii) the state treasurer may hold the public funds in accordance with Section [67-4-1](#) if a

272 court orders the public funds to be protected from improper diversion from their public
273 purpose.

274 [~~(11)~~] (12) The state auditor shall:

275 (a) establish audit guidelines and procedures for audits of local mental health and
276 substance abuse authorities and their contract providers, conducted pursuant to Title 17,
277 Chapter 43, Part 2, Local Substance Abuse Authorities, and Part 3, Local Mental Health
278 Authorities, Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal
279 Organizations, and Other Local Entities Act, and Title 62A, Chapter 15, Substance Abuse and
280 Mental Health Act; and

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

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

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

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

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

292 [~~(12)~~] (13) The state auditor may, in accordance with the auditor's responsibilities for
293 political subdivisions of the state as provided in Title 51, Chapter 2a, Accounting Reports from
294 Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, initiate audits or
295 investigations of any political subdivision that are necessary to determine honesty and integrity
296 in fiscal affairs, accuracy and reliability of financial statements, effectiveness, and adequacy of
297 financial controls and compliance with the law.

298 [~~(13)~~] (14) (a) The state auditor may not audit work that the state auditor performed

299 before becoming state auditor.

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

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

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

304 [~~14~~] (15) The state auditor shall:

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

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

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

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

314 (C) prescribes reasonable exceptions and modifications for smaller districts to the
315 uniform system of accounting, budgeting, and reporting;

316 (ii) maintain the manual under this Subsection [~~14~~] (15)(a) so that it continues to
317 reflect generally accepted accounting principles;

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

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

321 (v) prepare instructional materials, conduct training programs, and render other
322 services considered necessary to assist local districts and special service districts in
323 implementing the uniform accounting, budgeting, and reporting procedures; and

324 (b) continually analyze and evaluate the accounting, budgeting, and reporting practices
325 and experiences of specific local districts and special service districts selected by the state

326 auditor and make the information available to all districts.

327 ~~[(15)]~~ (16) (a) The following records in the custody or control of the state auditor are
328 protected records under Title 63G, Chapter 2, Government Records Access and Management
329 Act:

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

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

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

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

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

347 (b) The provisions of Subsections ~~[(15)]~~ (16)(a)(i), (ii), and (iii) do not prohibit the
348 disclosure of records or information that relate to a violation of the law by a governmental
349 entity or employee to a government prosecutor or peace officer.

350 (c) The provisions of this Subsection ~~[(15)]~~ (16) do not limit the authority otherwise
351 given to the state auditor to classify a document as public, private, controlled, or protected
352 under Title 63G, Chapter 2, Government Records Access and Management Act.

353 (d) (i) As used in this Subsection [~~(15)~~] (16)(d), "record dispute" means a dispute
354 between the state auditor and the subject of an audit performed by the state auditor as to
355 whether the state auditor may release a record, as defined in Section 63G-2-103, to the public
356 that the state auditor gained access to in the course of the state auditor's audit but which the
357 subject of the audit claims is not subject to disclosure under Title 63G, Chapter 2, Government
358 Records Access and Management Act.

359 (ii) The state auditor may submit a record dispute to the State Records Committee,
360 created in Section 63G-2-501, for a determination of whether the state auditor may, in
361 conjunction with the state auditor's release of an audit report, release to the public the record
362 that is the subject of the record dispute.

363 (iii) The state auditor or the subject of the audit may seek judicial review of a State
364 Records Committee determination under Subsection [~~(15)~~] (16)(d)(ii), as provided in Section
365 63G-2-404.

366 [~~(16)~~] (17) If the state auditor conducts an audit of an entity that the state auditor has
367 previously audited and finds that the entity has not implemented a recommendation made by
368 the state auditor in a previous audit, the state auditor shall notify the Legislative Management
369 Committee through its audit subcommittee that the entity has not implemented that
370 recommendation.

371 Section 6. Section 67-4-1 is amended to read:

372 **67-4-1. Duties.**

373 (1) The state treasurer shall:

374 (a) receive and maintain custody of all state funds;

375 (b) unless otherwise provided by law, invest all funds delivered into the state treasurer's
376 custody according to the procedures and requirements of Title 51, Chapter 7, State Money
377 Management Act;

378 (c) pay warrants drawn by the Division of Finance as they are presented;

379 (d) return each redeemed warrant to the Division of Finance for purposes of

380 reconciliation, post-audit, and verification;

381 (e) ensure that state warrants not presented to the state treasurer for payment within one
382 year from the date of issue, or a shorter period if required by federal regulation or contract, are
383 canceled and credited to the proper fund;

384 (f) account for all money received and disbursed;

385 (g) keep separate account of the different funds;

386 (h) keep safe all bonds, warrants, and securities delivered into his custody;

387 (i) at the request of either house of the Legislature, or of any legislative committee,
388 give information in writing as to the condition of the treasury, or upon any subject relating to
389 the duties of his office;

390 (j) keep the books open at all times for the inspection by the governor, the state auditor,
391 or any member of the Legislature, or any committee appointed to examine them by either house
392 of the Legislature;

393 (k) authenticate and validate documents when necessary;

394 (l) adopt a seal and file a description and an impression of it with the Division of
395 Archives; and

396 (m) discharge the duties of a member of all official boards of which he is or may be
397 made a member by the Constitution or laws of Utah.

398 (2) When necessary to perform his duties, the state treasurer may inspect the books,
399 papers, and accounts of any state entity.

400 (3) The state treasurer may take temporary custody of public funds if ordered by a court
401 to do so under Subsection 67-3-1(11).

402 **Section 7. Effective date.**

403 If approved by two-thirds of all the members elected to each house, this bill takes effect
404 upon approval by the governor, or the day following the constitutional time limit of Utah
405 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
406 the date of veto override.

