

Representative Kim F. Coleman proposes the following substitute bill:

COUNTY AUDITOR AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kim F. Coleman

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses the authority of a county auditor in a county of the first class to conduct a performance audit of a county entity.

Highlighted Provisions:

This bill:

- ▶ allows the county auditor in a county of the first class to conduct a performance audit of a county entity without the direction and supervision of the county legislative body or county executive;
- ▶ requires the county auditor in a county of the first class rather than the county legislative body to establish the goals and nature of a performance audit;
- ▶ addresses the circumstances in which a county auditor in a county of the first class should conduct a performance audit of a county entity;
- ▶ establishes the priority of performance audits that a legislative body in a county of the first class prioritizes;
- ▶ allows any elected official in a county of the first class to request a performance audit of the county auditor;
- ▶ amends a prohibition on the state auditor's authority regarding entities that have an elected auditor;



26 ▶ allows the state auditor to perform any audit that certain county officials request;

27 and

28 ▶ makes technical and conforming changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **17-19a-206**, as enacted by Laws of Utah 2012, Chapter 17

36 **67-3-1**, as last amended by Laws of Utah 2018, Chapters 200 and 256



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

39 Section 1. Section **17-19a-206** is amended to read:

40 **17-19a-206. Performance audit services.**

41 (1) (a) A county auditor in a county of the first class may, subject to Subsections (1)(c)
42 and (3), conduct a performance audit of a county office, department, division, or any other
43 county entity.

44 (b) Subject to Subsection (1)(c), the county auditor shall:

45 (i) establish the goals and nature of a performance audit described in Subsection (1)(a)
46 and related services; and

47 (ii) conduct a performance audit described in Subsection (1)(a):

48 (A) as needed, in accordance with good management practices and professional
49 standards; and

50 (B) based on the county auditor's professional judgment, taking into account
51 considerations related to risk and materiality.

52 (c) (i) Any performance audit that the county legislative body prioritizes has a higher
53 priority than other performance audit requests or performance audit priorities, including
54 requests and audits that the county auditor prioritizes.

55 (ii) A county auditor in a county of the first class shall conduct performance audits in
56 accordance with the prioritization described in Subsection (1)(c)(i).

57 ~~[(1)]~~ (2) (a) A county auditor in a county of the second through sixth class shall, under
 58 the direction and supervision of the county legislative body or county executive and subject to
 59 Subsections ~~[(1)(b) and (2)]~~ (2)(b) and (3), provide performance audit services for a county
 60 office, department, division, or other county entity.

61 ~~[(b) A county auditor may not conduct a performance audit of the auditor's own office.]~~

62 ~~[(2)]~~ (b) The county legislative body or county executive shall establish the goals and
 63 nature of a performance audit described in Subsection (2)(a) and related services.

64 (3) (a) A county auditor may not conduct a performance audit of the auditor's own
 65 office.

66 (b) Any elected official in a county of the first class may request a performance audit of
 67 the county auditor.

68 ~~[(3)]~~ (4) A performance audit conducted in accordance with this section may include a
 69 review and audit of the following:

- 70 (a) the honesty and integrity of financial and other affairs;
- 71 (b) the accuracy and reliability of financial and management reports;
- 72 (c) the adequacy of financial controls to safeguard public funds;
- 73 (d) the management and staff adherence to statute, ordinance, policies, and legislative
 74 intent;
- 75 (e) the economy, efficiency, and effectiveness of operational performance;
- 76 (f) the accomplishment of intended objectives; and
- 77 (g) whether management, financial, and information systems are adequate and
 78 effective.

79 Section 2. Section **67-3-1** is amended to read:

80 **67-3-1. Functions and duties.**

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

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

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

- 87 (a) the condition of the state's finances;

88 (b) the revenues received or accrued;

89 (c) expenditures paid or accrued;

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

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

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

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

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

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

101 (A) honesty and integrity in fiscal affairs;

102 (B) accuracy and reliability of financial statements;

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

104 (D) compliance with the law.

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

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

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

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

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

119 determination of any or all of the following:

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

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

122 (iii) whether or not its operations have been conducted in an efficient, effective, and

123 cost-efficient manner;

124 (iv) whether or not its programs have been effective in accomplishing the intended

125 objectives; and

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

127 effective, and secure.

128 (b) The auditor may not conduct performance and special purpose audits,

129 examinations, and reviews of any entity that receives public funds if the entity:

130 (i) has an elected auditor with complete authority to conduct performance and special

131 purpose audits, examinations, and reviews; and

132 (ii) has, within the entity's last budget year, had its financial statements or performance

133 formally reviewed by another outside auditor.

134 (c) The state auditor may perform any audit that the following requests:

135 (i) a county legislative body;

136 (ii) a county executive; or

137 (iii) a county auditor.

138 (5) The state auditor shall administer any oath or affirmation necessary to the

139 performance of the duties of the auditor's office, and may subpoena witnesses and documents,

140 whether electronic or otherwise, and examine into any matter that the auditor considers

141 necessary.

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

143 management of any property of this state or its political subdivisions to submit statements

144 regarding it at the time and in the form that the auditor requires.

145 (7) The state auditor shall:

146 (a) except where otherwise provided by law, institute suits in Salt Lake County in

147 relation to the assessment, collection, and payment of its revenues against:

148 (i) persons who by any means have become entrusted with public money or property

149 and have failed to pay over or deliver the money or property; and

- 150 (ii) all debtors of the state;
- 151 (b) collect and pay into the state treasury all fees received by the state auditor;
- 152 (c) perform the duties of a member of all boards of which the state auditor is a member
- 153 by the constitution or laws of the state, and any other duties that are prescribed by the
- 154 constitution and by law;
- 155 (d) stop the payment of the salary of any state official or state employee who:
- 156 (i) refuses to settle accounts or provide required statements about the custody and
- 157 disposition of public funds or other state property;
- 158 (ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling
- 159 board or department head with respect to the manner of keeping prescribed accounts or funds;
- 160 or
- 161 (iii) fails to correct any delinquencies, improper procedures, and errors brought to the
- 162 official's or employee's attention;
- 163 (e) establish accounting systems, methods, and forms for public accounts in all taxing
- 164 or fee-assessing units of the state in the interest of uniformity, efficiency, and economy;
- 165 (f) superintend the contractual auditing of all state accounts;
- 166 (g) subject to Subsection (8)(a), withhold state allocated funds or the disbursement of
- 167 property taxes from a state or local taxing or fee-assessing unit, if necessary, to ensure that
- 168 officials and employees in those taxing units comply with state laws and procedures in the
- 169 budgeting, expenditures, and financial reporting of public funds;
- 170 (h) subject to Subsection (9), withhold the disbursement of tax money from any county,
- 171 if necessary, to ensure that officials and employees in the county comply with Section
- 172 [59-2-303.1](#); and
- 173 (i) withhold state allocated funds or the disbursement of property taxes from a local
- 174 government entity or a limited purpose entity, as those terms are defined in Section [67-1a-15](#) if
- 175 the state auditor finds the withholding necessary to ensure that the entity registers and
- 176 maintains the entity's registration with the lieutenant governor, in accordance with Section
- 177 [67-1a-15](#).
- 178 (8) (a) Except as otherwise provided by law, the state auditor may not withhold funds
- 179 under Subsection (7)(g) until a state or local taxing or fee-assessing unit has received formal
- 180 written notice of noncompliance from the auditor and has been given 60 days to make the

181 specified corrections.

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

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

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

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

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

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

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

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

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

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

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

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

211 (9) The state auditor may not withhold funds under Subsection (7)(h) until a county has

212 received formal written notice of noncompliance from the auditor and has been given 60 days
213 to make the specified corrections.

214 (10) (a) The state auditor may not withhold funds under Subsection (7)(i) until the state
215 auditor receives a notice of non-registration, as that term is defined in Section 67-1a-15.

216 (b) If the state auditor receives a notice of non-registration, the state auditor may
217 prohibit the local government entity or limited purpose entity, as those terms are defined in
218 Section 67-1a-15, from accessing:

219 (i) money held by the state; and

220 (ii) money held in an account of a financial institution by:

221 (A) contacting the entity's financial institution and requesting that the institution
222 prohibit access to the account; or

223 (B) filing an action in district court requesting an order of the court to prohibit a
224 financial institution from providing the entity access to an account.

225 (c) The state auditor shall remove the prohibition on accessing funds described in
226 Subsection (10)(b) if the state auditor received a notice of registration, as that term is defined in
227 Section 67-1a-15, from the lieutenant governor.

228 (11) Notwithstanding Subsection (7)(g), (7)(h), (7)(i), (8)(b), (8)(d), or (10)(b), the
229 state auditor:

230 (a) shall authorize a disbursement by a local government entity or limited purpose
231 entity, as those terms are defined in Section 67-1a-15, or a state or local taxing or fee-assessing
232 unit if the disbursement is necessary to:

233 (i) avoid a major disruption in the operations of the local government entity, limited
234 purpose entity, or state or local taxing or fee-assessing unit; or

235 (ii) meet debt service obligations; and

236 (b) may authorize a disbursement by a local government entity, limited purpose entity,
237 or state or local taxing or fee-assessing unit as the state auditor determines is appropriate.

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

241 (b) If the state auditor seeks relief under Subsection (12)(a):

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

243 and

244 (ii) the state treasurer may hold the public funds in accordance with Section 67-4-1 if a
245 court orders the public funds to be protected from improper diversion from their public
246 purpose.

247 (13) The state auditor shall:

248 (a) establish audit guidelines and procedures for audits of local mental health and
249 substance abuse authorities and their contract providers, conducted pursuant to Title 17,
250 Chapter 43, Part 2, Local Substance Abuse Authorities, Title 17, Chapter 43, Part 3, Local
251 Mental Health Authorities, Title 51, Chapter 2a, Accounting Reports from Political
252 Subdivisions, Interlocal Organizations, and Other Local Entities Act, and Title 62A, Chapter
253 15, Substance Abuse and Mental Health Act; and

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

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

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

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

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

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

271 (15) (a) The state auditor may not audit work that the state auditor performed before
272 becoming state auditor.

273 (b) If the state auditor has previously been a responsible official in state government

274 whose work has not yet been audited, the Legislature shall:

- 275 (i) designate how that work shall be audited; and
- 276 (ii) provide additional funding for those audits, if necessary.

277 (16) The state auditor shall:

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

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

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

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

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

289 (ii) maintain the manual under this Subsection (15)(a) so that it continues to reflect
290 generally accepted accounting principles;

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

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

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

297 (B) ensure that any training described in Subsection [~~(15)~~] (16)(a)(v)(A) complies with
298 Title 63G, Chapter 22, State Training and Certification Requirements; and

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

302 (17) (a) The following records in the custody or control of the state auditor are
303 protected records under Title 63G, Chapter 2, Government Records Access and Management
304 Act:

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

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

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

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

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

322 (b) The provisions of Subsections (17)(a)(i), (ii), and (iii) do not prohibit the disclosure
323 of records or information that relate to a violation of the law by a governmental entity or
324 employee to a government prosecutor or peace officer.

325 (c) The provisions of this Subsection (17) do not limit the authority otherwise given to
326 the state auditor to classify a document as public, private, controlled, or protected under Title
327 63G, Chapter 2, Government Records Access and Management Act.

328 (d) (i) As used in this Subsection (17)(d), "record dispute" means a dispute between the
329 state auditor and the subject of an audit performed by the state auditor as to whether the state
330 auditor may release a record, as defined in Section 63G-2-103, to the public that the state
331 auditor gained access to in the course of the state auditor's audit but which the subject of the
332 audit claims is not subject to disclosure under Title 63G, Chapter 2, Government Records
333 Access and Management Act.

334 (ii) The state auditor may submit a record dispute to the State Records Committee,
335 created in Section 63G-2-501, for a determination of whether the state auditor may, in

336 conjunction with the state auditor's release of an audit report, release to the public the record
337 that is the subject of the record dispute.

338 (iii) The state auditor or the subject of the audit may seek judicial review of a State
339 Records Committee determination under Subsection (17)(d)(ii), as provided in Section
340 [63G-2-404](#).

341 (18) If the state auditor conducts an audit of an entity that the state auditor has
342 previously audited and finds that the entity has not implemented a recommendation made by
343 the state auditor in a previous audit, the state auditor shall notify the Legislative Management
344 Committee through its audit subcommittee that the entity has not implemented that
345 recommendation.