

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 to conduct a performance audit of a county entity without the direction and supervision of the county legislative body or county executive;
- ▶ removes the authority of the county legislative body to establish the goals and nature of a performance audit;
- ▶ allows a county legislative body or county executive to:
 - request a performance audit of the county auditor;
 - petition the state auditor or the legislative auditor general to review a draft performance audit report before a county auditor may release the audit;
- ▶ allows the state auditor and legislative auditor general to establish guidelines or standards for county auditor's conducting performance audits;
- ▶ requires the state auditor or legislative auditor general to conduct a review of a sample of county auditor performance audits every two years;
- ▶ amends a prohibition on the state auditor's authority regarding entities that have an



- 26 elected auditor;
- 27 ▶ allows the state auditor to perform any audit that certain county officials request;
- 28 and
- 29 ▶ makes technical and conforming changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **17-19a-206**, as enacted by Laws of Utah 2012, Chapter 17

37 **67-3-1**, as last amended by Laws of Utah 2018, Chapters 200 and 256



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

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

41 **17-19a-206. Performance audit services.**

42 (1) (a) A county auditor ~~[shall]~~ may, ~~[under the direction and supervision of the county~~
43 ~~legislative body or county executive and]~~ subject to Subsections (1)(b) and (2), ~~[provide]~~
44 conduct performance [audit services] audits for a county office, department, division, program,
45 or other county entity.

46 (b) The county auditor shall base any performance audit on criteria established in
47 statute, county ordinance, ordinances of another jurisdiction, or an established best practice.

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

50 (2) (a) The county legislative body or county executive ~~[shall establish the goals and~~
51 ~~nature of a performance audit and related services:]~~ may:

52 (i) request that the county auditor conduct a performance audit; and

53 (ii) petition either the state auditor or the legislative auditor general to review a draft
54 performance audit report and associated working papers related to a county auditor's
55 performance audit before the county auditor makes any public release in order to determine
56 whether the performance audit complies with criteria, guidelines, or standards described in

57 Subsection (1)(b) or (4)(a).

58 (b) If a county legislative body or county executive petitions the state auditor or
59 legislative auditor general under Subsection (2)(a)(ii), the county auditor may not release the
60 performance audit report at issue in the petition until the state auditor or legislative auditor
61 general completes the review described in Subsection (2)(a)(ii).

62 (3) A performance audit conducted in accordance with this section may include a
63 review and audit of the following:

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

73 (4) (a) The state auditor and legislative auditor general may jointly establish guidelines
74 and standards for county auditors conducting a performance audit.

75 (b) At least once every two calendar years, either the state auditor or the legislative
76 auditor general shall conduct a review of a sample of performance audit reports that county
77 auditors conducted during the preceding two-year period.

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

79 **67-3-1. Functions and duties.**

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

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

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

- 86 (a) the condition of the state's finances;
- 87 (b) the revenues received or accrued;

88 (c) expenditures paid or accrued;

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

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

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

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

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

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

100 (A) honesty and integrity in fiscal affairs;

101 (B) accuracy and reliability of financial statements;

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

103 (D) compliance with the law.

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

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

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

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

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

- 119 (i) the honesty and integrity of all its fiscal affairs;
- 120 (ii) whether or not its administrators have faithfully complied with legislative intent;
- 121 (iii) whether or not its operations have been conducted in an efficient, effective, and
- 122 cost-efficient manner;
- 123 (iv) whether or not its programs have been effective in accomplishing the intended
- 124 objectives; and
- 125 (v) whether or not its management, control, and information systems are adequate,
- 126 effective, and secure.
- 127 (b) The auditor may not conduct performance and special purpose audits,
- 128 examinations, and reviews of any entity that receives public funds if the entity:
- 129 (i) has an elected auditor with complete authority to conduct performance and special
- 130 purpose audits, examinations, and reviews; and
- 131 (ii) has, within the entity's last budget year, had its financial statements or performance
- 132 formally reviewed by another outside auditor.
- 133 (c) The state auditor may perform any audit that the following requests:
- 134 (i) a county legislative body;
- 135 (ii) a county executive; or
- 136 (iii) a county auditor.
- 137 (5) The state auditor shall administer any oath or affirmation necessary to the
- 138 performance of the duties of the auditor's office, and may subpoena witnesses and documents,
- 139 whether electronic or otherwise, and examine into any matter that the auditor considers
- 140 necessary.
- 141 (6) The state auditor may require all persons who have had the disposition or
- 142 management of any property of this state or its political subdivisions to submit statements
- 143 regarding it at the time and in the form that the auditor requires.
- 144 (7) The state auditor shall:
- 145 (a) except where otherwise provided by law, institute suits in Salt Lake County in
- 146 relation to the assessment, collection, and payment of its revenues against:
- 147 (i) persons who by any means have become entrusted with public money or property
- 148 and have failed to pay over or deliver the money or property; and
- 149 (ii) all debtors of the state;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

212 to make the specified corrections.

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

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

218 (i) money held by the state; and

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

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

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

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

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

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

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

234 (ii) meet debt service obligations; and

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

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

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

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

242 and

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

246 (13) The state auditor shall:

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

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

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

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

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

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

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

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

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

274 (i) designate how that work shall be audited; and
275 (ii) provide additional funding for those audits, if necessary.
276 (16) The state auditor shall:
277 (a) with the assistance, advice, and recommendations of an advisory committee
278 appointed by the state auditor from among local district boards of trustees, officers, and
279 employees and special service district boards, officers, and employees:
280 (i) prepare a Uniform Accounting Manual for Local Districts that:
281 (A) prescribes a uniform system of accounting and uniform budgeting and reporting
282 procedures for local districts under Title 17B, Limited Purpose Local Government Entities -
283 Local Districts, and special service districts under Title 17D, Chapter 1, Special Service
284 District Act;
285 (B) conforms with generally accepted accounting principles; and
286 (C) prescribes reasonable exceptions and modifications for smaller districts to the
287 uniform system of accounting, budgeting, and reporting;
288 (ii) maintain the manual under this Subsection (15)(a) so that it continues to reflect
289 generally accepted accounting principles;
290 (iii) conduct a continuing review and modification of procedures in order to improve
291 them;
292 (iv) prepare and supply each district with suitable budget and reporting forms; and
293 (v) (A) prepare instructional materials, conduct training programs, and render other
294 services considered necessary to assist local districts and special service districts in
295 implementing the uniform accounting, budgeting, and reporting procedures; and
296 (B) ensure that any training described in Subsection [~~(15)~~] (16)(a)(v)(A) complies with
297 Title 63G, Chapter 22, State Training and Certification Requirements; and
298 (b) continually analyze and evaluate the accounting, budgeting, and reporting practices
299 and experiences of specific local districts and special service districts selected by the state
300 auditor and make the information available to all districts.
301 (17) (a) The following records in the custody or control of the state auditor are
302 protected records under Title 63G, Chapter 2, Government Records Access and Management
303 Act:
304 (i) records that would disclose information relating to allegations of personal

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

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

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

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

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

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

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

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

333 (ii) The state auditor may submit a record dispute to the State Records Committee,
334 created in Section 63G-2-501, for a determination of whether the state auditor may, in
335 conjunction with the state auditor's release of an audit report, release to the public the record

336 that is the subject of the record dispute.

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

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