

Senator Karen Mayne proposes the following substitute bill:

LEGISLATIVE AUDIT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Francis D. Gibson

LONG TITLE

General Description:

This bill amends provisions relating to the duties and practices of the legislative auditor general.

Highlighted Provisions:

This bill:

- ▶ modifies duties and powers of the legislative auditor general;
- ▶ requires employees of the Office of Legislative Auditor General to be subject to background checks; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

36-12-15, as last amended by Laws of Utah 2012, Chapter 137

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



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

27 **36-12-15. Office of Legislative Auditor General established -- Qualifications --**

28 **Powers, functions, and duties.**

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

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

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

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

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

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

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

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

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

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

49 (I) policies;

50 (II) performance measures; and

51 (III) data collection;

52 (C) send each new program and agency:

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

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

57 (D) (I) using the new program or agency's response to the self evaluation survey
58 instruments, recommend to the legislative audit subcommittee that the office conduct an audit
59 of those new programs and agencies created on which questions have arisen as a result of the
60 response to the survey instrument and provide a limited scope audit report on those new
61 programs or agencies on which it receives direction to audit to the legislative interim
62 committee and to the legislative appropriations subcommittee with oversight responsibility for
63 that program or agency on or before the November interim meeting; and

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

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

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

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

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

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

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

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

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

79 (6) The Office of Legislative Auditor General [~~may~~]:

80 (a) (i) shall, notwithstanding any other provision of law, [~~obtain~~] have access to all
81 records, documents, and reports of any entity that receives public funds that are necessary to
82 the scope of [~~its duties; and~~] the duties of the legislative auditor general or the office;

83 (ii) [~~if necessary,~~] may issue a subpoena to obtain access as provided in Subsection
84 (6)(a)(i) using the procedures contained in Title 36, Chapter 14, Legislative Subpoena Powers;
85 and

86 (iii) notwithstanding any other provision of law, be present for any meeting that is
87 necessary to the scope of the legislative auditor general's duties, except where that portion of a

88 meeting is protected by attorney-client privilege due to the specific nature of the subject matter
89 and the circumstances of that portion of the meeting.

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

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

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

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

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

98 and

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

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

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

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

116 (c) Prior to the time that an audit is completed and the final audit report is released,
117 records or drafts circulated to a person who is not an employee or head of a governmental
118 entity for their response or information.

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

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

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

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

128 (9) The legislative auditor general shall:

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

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

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

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

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

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

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

148 (b) shall report, as soon as possible, that the state agency has not implemented that
149 recommendation to a meeting of an appropriate legislative committee designated by the audit

150 subcommittee of the Legislative Management Committee.

151 (11) (a) Prior to each annual general session, the legislative auditor general shall
152 prepare a summary of the audits conducted and of actions taken based upon them during the
153 preceding year.

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

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

159 (12) (a) No person or entity may:

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

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

164 (b) Any person or entity that violates the provisions of this Subsection (12) is guilty of
165 a class B misdemeanor.

166 (13) (a) Beginning July 1, 2020, the Office of the Legislative Auditor General may
167 require any current employee, or any applicant for employment, to submit to a
168 fingerprint-based local, regional, and criminal history background check as an ongoing
169 condition of employment.

170 (b) An employee or applicant for employment shall provide a completed fingerprint
171 card to the office upon request. The office shall require that an individual required to submit to
172 a background check under this subsection also provide a signed waiver on a form provided by
173 the office that meets the requirements of Subsection 53-10-108(4).

174 (c) For a noncriminal justice background search and registration in accordance with
175 Subsection 53-10-108(13), the office shall submit to the Bureau of Criminal Identification:

176 (i) the employee's or applicant's personal identifying information and fingerprints for a
177 criminal history search of applicable local, regional, and national databases; and

178 (ii) a request for all information received as a result of the local, regional, and
179 nationwide background check.