

SB0075S01 compared with SB0075

~~{deleted text}~~ shows text that was in SB0075 but was deleted in SB0075S01.

inserted text shows text that was not in SB0075 but was inserted into SB0075S01.

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Senator Karen Mayne proposes the following substitute bill:

LEGISLATIVE AUDIT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ ~~{permits}~~ modifies duties and powers of the legislative auditor general ~~{and the audit subcommittee of the Legislative Management Committee to designate certain audit findings and recommendations as critical;~~
- ~~creates procedures and requirements for reporting on critical findings and recommendations;~~
- ~~creates procedures for legislative responses and requirements for entities that are subject to a critical finding or recommendation};~~

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- ▶ 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:

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

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

- (1) There is created an Office of Legislative Auditor General as a permanent staff office for the Legislature.
- (2) The legislative auditor general shall be a licensed certified public accountant or certified internal auditor with at least five years of experience in the auditing or public accounting profession, or the equivalent, prior to appointment.
- (3) The legislative auditor general shall appoint and develop a professional staff within budget limitations.
- (4) (a) The Office of the Legislative Auditor General shall exercise the constitutional authority provided in Article VI, Sec. 33, Utah Constitution.
 - (b) Under the direction of the legislative auditor general, the office shall:
 - (i) conduct comprehensive and special purpose audits, examinations, and reviews of any entity that receives public funds;
 - (ii) prepare and submit a written report on each audit, examination, or review to the Legislative Management Committee, the audit subcommittee, and to all members of the Legislature within 75 days after the audit or examination is completed; and
 - (iii) as provided in Section 36-24-101:

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

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

(I) policies;

(II) performance measures; and

(III) data collection;

(C) send each new program and agency:

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

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

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

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

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

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

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

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

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

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

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

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objectives; and

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

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

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

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

(iii) notwithstanding any other provision of law, be present for any meeting that is necessary to the scope of the legislative auditor general's duties, except where that portion of a meeting is protected by attorney-client privilege due to the specific nature of the subject matter and the circumstances of that portion of the meeting.

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

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

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

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

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

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

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

(a) Records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a past or present governmental

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employee if the information or allegation cannot be corroborated by the legislative auditor general through other documents or evidence, and the records relating to the allegation are not relied upon by the legislative auditor general in preparing a final audit report.

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

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

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

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

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

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

(9) The legislative auditor general shall:

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

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

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

(d) report immediately in writing to the Legislative Management Committee through its audit subcommittee any apparent instances of malfeasance or nonfeasance by a state officer

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or employee disclosed by the audit of a state agency; and

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

~~{ (10) Certain audit findings or recommendations may be designated as critical according to the following procedures:~~

~~—— (a) The legislative auditor general may, as part of preparing an audit, designate a finding or recommendation in the audit report as a critical finding or recommendation.~~

~~—— (b) The audit subcommittee may, by a motion adopted by a majority of the subcommittee in the meeting where the audit report is presented, designate a finding or recommendation in the audit report as a critical finding or recommendation. However, the audit subcommittee may not remove or modify a critical designation made by the legislative auditor general under Subsection (10)(a):~~

~~—— (c) The legislative auditor general shall develop and maintain internal policies and standards for designating a finding or recommendation as critical, based on best practices found within the areas of the legislative auditor general's professional competence.~~

~~{ (10) (11) }~~ If the legislative auditor general conducts an audit of a state agency that has previously been audited and finds that the state agency has not implemented a recommendation made by the legislative auditor general in a previous audit, the legislative auditor general shall, upon release of the audit:

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

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

~~{ (11) (a) Prior to each annual general session, the legislative auditor general shall { }~~

~~{ (12) Before each annual general session, the legislative auditor general shall:~~

~~—— (a) } prepare a { report that:~~

~~—— (i) contains a } summary of the audits conducted and of actions taken based upon them during the preceding year { }. { } }~~

~~{ (b) (ii) } { } This report shall also set { sets } forth any items and recommendations~~

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that are important for consideration in the forthcoming session, together with a brief statement or rationale for each item or recommendation ~~{[.], and~~

~~—— (iii) includes a list of all critical findings and recommendations from audits conducted during the preceding year and, as determined by the legislative auditor general, a list of significant actions taken in response to findings and recommendations; and~~

~~—— [(c)] (b) { };~~

(c) The legislative auditor general shall ~~{ }~~ deliver the report to the Legislature and to the appropriate committees of the Legislature.

~~{(13) If the legislative auditor general conducts an audit, examination, or review of any entity that receives public funds and has previously been audited, and if the legislative auditor general finds that the entity has not implemented a recommendation to address a critical finding or critical recommendation in a previous audit:~~

~~—— (a) the legislative auditor general shall report on the above circumstances as follows:~~

~~—— (i) concurrently with the release of the audit, report in writing to the audit subcommittee of the Legislative Management Committee that the entity has not implemented the critical finding or recommendation;~~

~~—— (ii) as soon as is reasonably possible after the release of the audit, report on the entity's noncompliance to a meeting of an appropriate legislative subcommittee as determined by the audit subcommittee; and~~

~~—— (b) the legislative auditor general shall continue to conduct in-depth annual review of critical findings and recommendations until such time that:~~

~~—— (i) the legislative auditor general reports in writing to the audit subcommittee that the entity has sufficiently complied with all critical findings and recommendations; or~~

~~—— (ii) the Legislative Management Committee makes a determination, by a vote of the committee, that no further review is necessary.~~

~~{(12)} { (14) } (a) No person or entity may:~~

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

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

(b) Any person or entity that violates the provisions of this Subsection ~~{(12)} { (14) }~~

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is guilty of a class B misdemeanor.

~~(15)~~13 (a) Beginning July 1, 2020, the Office of the Legislative Auditor General may require any current employee, or any applicant for employment, to submit to a fingerprint-based local, regional, and criminal history background check as an ongoing condition of employment.

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

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

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

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