

Representative Jefferson S. Burton proposes the following substitute bill:

OFFICE OF LEGISLATIVE AUDITOR GENERAL REQUIREMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jefferson S. Burton

Senate Sponsor: Michael K. McKell

LONG TITLE

General Description:

This bill establishes requirements related to the Office of the Legislative Auditor General.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the chief officer of an entity that the Office of the Legislative Auditor General (OLAG) audits to prepare a written audit response plan addressing each recommendation in OLAG's audit report;
 - ▶ requires OLAG to attach the audit response plan described above to the audit report;
 - ▶ vests the legislator auditor general with discretion to prepare a written reply to an audit response plan;
 - ▶ in certain circumstances, instructs the chief officer described above to update the audit response plan on a semi-annual basis and to submit the update to:
 - the legislative committee designated by the Audit Subcommittee; and
 - the legislative auditor general;
 - ▶ provides that the chief officer's obligation to update an audit response plan terminates when OLAG reports to the Audit Subcommittee that the chief officer has



26 fully implemented each recommendation in the audit report;

27 ▶ clarifies the Audit Subcommittee's and OLAG's responsibilities in relation to an
28 entity that fails to implement a recommendation included in a previous audit report;

29 ▶ grants OLAG the authority to annually perform a systemic performance audit of one
30 or more institutions of higher education; and

31 ▶ makes technical and conforming changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **36-12-8**, as last amended by Laws of Utah 2016, Chapter 403

39 **36-12-15**, as last amended by Laws of Utah 2023, Chapter 21

40 **36-12-15.1**, as last amended by Laws of Utah 2023, Chapter 21

41 ENACTS:

42 **36-12-15.3**, Utah Code Annotated 1953



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

45 Section 1. Section **36-12-8** is amended to read:

46 **36-12-8. Legislative Management Committee -- Research and General Counsel**
47 **Subcommittee -- Budget Subcommittee -- Audit Subcommittee -- Duties -- Members --**
48 **Meetings.**

49 (1) There are created within the Legislative Management Committee:

50 (a) the Research and General Counsel Subcommittee;

51 (b) the Budget Subcommittee; and

52 (c) the Audit Subcommittee.

53 (2) (a) The Research and General Counsel Subcommittee, comprising six members,
54 shall recommend to the Legislative Management Committee a person or persons to hold the
55 positions of director of the Office of Legislative Research and General Counsel and legislative
56 general counsel.

57 (b) The Budget Subcommittee, comprising six members, shall recommend to the
58 Legislative Management Committee a person to hold the position of legislative fiscal analyst.

59 (c) The Audit Subcommittee shall comprise:

60 (i) the president, majority leader, and minority leader of the Senate; and

61 (ii) the speaker, majority leader, and minority leader of the House of Representatives.

62 (d) The Audit Subcommittee shall:

63 (i) recommend to the Legislative Management Committee a person to hold the position
64 of legislative auditor general; and

65 (ii) (A) review all requests for audits;

66 (B) prioritize those requests;

67 (C) hear all audit reports and refer those reports to other legislative committees for
68 their further review and action as appropriate; and

69 (D) when notified by the legislative auditor general [~~or state auditor~~] that a subsequent
70 audit has found that an entity has not implemented a previous audit recommendation, refer the
71 audit report to an appropriate legislative committee and also ensure that an appropriate
72 legislative committee conducts a review of the entity that has not implemented the previous
73 audit recommendation.

74 (3) The members of each subcommittee of the Legislative Management Committee,
75 other than the Audit Subcommittee, shall have equal representation from each major political
76 party and shall be appointed from the membership of the Legislative Management Committee
77 by an appointments committee comprised of the speaker and the minority leader of the House
78 of Representatives and the president and the minority leader of the Senate.

79 (4) Each subcommittee of the Legislative Management Committee:

80 (a) shall meet as often as necessary to perform its duties; and

81 (b) may meet during and between legislative sessions.

82 Section 2. Section **36-12-15** is amended to read:

83 **36-12-15. Office of the Legislative Auditor General established -- Qualifications --**
84 **Powers, functions, and duties -- Reporting -- Criminal penalty -- Employment.**

85 (1) As used in this section:

86 (a) "Entity" means:

87 (i) a government organization; or

88 (ii) a receiving organization.

89 (b) "Government organization" means:

90 (i) a state branch, department, or agency; or

91 (ii) a political subdivision, including a county, municipality, special district, special
92 service district, school district, interlocal entity as defined in Section 11-13-103, or any other
93 local government unit.

94 (c) "Receiving organization" means an organization that receives public funds that is
95 not a government organization.

96 (2) There is created the Office of the Legislative Auditor General as a permanent staff
97 office for the Legislature.

98 (3) The legislative auditor general shall be a licensed certified public accountant or
99 certified internal auditor with at least seven years of experience in the auditing or public
100 accounting profession, or the equivalent, prior to appointment.

101 (4) The legislative auditor general shall appoint and develop a professional staff within
102 budget limitations.

103 (5) The Office of the Legislative Auditor General shall exercise the constitutional
104 authority provided in Utah Constitution, Article VI, Section 33.

105 (6) Under the direction of the legislative auditor general, the Office of the Legislative
106 Auditor General shall:

107 (a) conduct comprehensive and special purpose audits, examinations, investigations, or
108 reviews of entity funds, functions, and accounts;

109 (b) prepare and submit a written report on each audit, examination, investigation, or
110 review to the Audit Subcommittee created in Section 36-12-8 and make the report available to
111 all members of the Legislature within 75 days after the audit, examination, investigation, or
112 review is completed;

113 (c) monitor, conduct a risk assessment of, or audit any efficiency evaluations that the
114 legislative auditor general determines necessary, in accordance with Title 63J, Chapter 1, Part
115 9, Government Performance Reporting and Efficiency Process, and legislative rule;

116 (d) create, manage, and report to the Audit Subcommittee a list of high risk programs
117 and operations that:

118 (i) threaten public funds or programs;

- 119 (ii) are vulnerable to inefficiency, waste, fraud, abuse, or mismanagement; or
- 120 (iii) require transformation;
- 121 (e) monitor and report to the Audit Subcommittee the health of a government
- 122 organization's internal audit functions;
- 123 (f) make recommendations to increase the independence and value added of internal
- 124 audit functions throughout the state;
- 125 (g) implement a process to track, monitor, and report whether the subject of an audit
- 126 has implemented recommendations made in the audit report;
- 127 (h) establish, train, and maintain individuals within the office to conduct investigations
- 128 and represent themselves as lawful investigators on behalf of the office;
- 129 (i) establish policies, procedures, methods, and standards of audit work and
- 130 investigations for the office and staff;
- 131 (j) prepare and submit each audit and investigative report independent of any influence
- 132 external of the office, including the content of the report, the conclusions reached in the report,
- 133 and the manner of disclosing the legislative auditor general's findings;
- 134 (k) prepare and submit the annual budget request for the office; and
- 135 (l) perform other duties as prescribed by the Legislature.
- 136 (7) In conducting an audit, examination, investigation, or review of an entity, the
- 137 Office of the Legislative Auditor General may include a determination of any or all of the
- 138 following:
- 139 (a) the honesty and integrity of any of the entity's fiscal affairs;
- 140 (b) the accuracy and reliability of the entity's internal control systems and specific
- 141 financial statements and reports;
- 142 (c) whether or not the entity's financial controls are adequate and effective to properly
- 143 record and safeguard the entity's acquisition, custody, use, and accounting of public funds;
- 144 (d) whether the entity's administrators have complied with legislative intent;
- 145 (e) whether the entity's operations have been conducted in an efficient, effective, and
- 146 cost efficient manner;
- 147 (f) whether the entity's programs have been effective in accomplishing intended
- 148 objectives; and
- 149 (g) whether the entity's management control and information systems are adequate and

150 effective.

151 (8) (a) If requested by the Office of the Legislative Auditor General, each entity that the
152 legislative auditor general is authorized to audit under Utah Constitution, Article VI,
153 Section 33, or this section shall, notwithstanding any other provision of law except as provided
154 in Subsection (8)(b), provide the office with access to information, materials, or resources the
155 office determines are necessary to conduct an audit, examination, investigation, or review,
156 including:

157 (i) the following in the possession or custody of the entity in the format identified by
158 the office:

159 (A) a record, document, and report; and

160 (B) films, tapes, recordings, and electronically stored information;

161 (ii) entity personnel; and

162 (iii) each official or unofficial recording of formal or informal meetings or
163 conversations to which the entity has access.

164 (b) To the extent compliance would violate federal law, the requirements of Subsection
165 (8)(a) do not apply.

166 (9) (a) In carrying out the duties provided for in this section and under Utah
167 Constitution, Article VI, Section 33, the legislative auditor general may issue a subpoena to
168 access information, materials, or resources in accordance with Chapter 14, Legislative
169 Subpoena Powers.

170 (b) The legislative auditor general may issue a subpoena, as described in Subsection
171 (9)(a), to a financial institution or any other entity to obtain information as part of an
172 investigation of fraud, waste, or abuse, including any suspected malfeasance, misfeasance, or
173 nonfeasance involving public funds.

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

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

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

180 (11) (a) The following records in the custody or control of the legislative auditor

181 general are protected records under Title 63G, Chapter 2, Government Records Access and
182 Management Act:

183 (i) records and audit work papers that would disclose information relating to
184 allegations of personal misconduct, gross mismanagement, or illegal activity of a past or
185 present governmental employee if the information or allegation cannot be corroborated by the
186 legislative auditor general through other documents or evidence, and the records relating to the
187 allegation are not relied upon by the legislative auditor general in preparing a final audit report;

188 (ii) records and audit workpapers that would disclose the identity of a person who,
189 during the course of a legislative audit, communicated the existence of:

190 (A) unethical behavior;

191 (B) waste of public funds, property, or personnel; or

192 (C) a violation or suspected violation of a United States, Utah state, or political
193 subdivision law, rule, ordinance, or regulation, if the person disclosed on the condition that the
194 identity of the person be protected;

195 (iii) before an audit is completed and the final audit report is released, records or drafts
196 circulated to a person who is not an employee or head of an entity for review, response, or
197 information;

198 (iv) records that would disclose:

199 (A) an outline;

200 (B) all or part of an audit survey, audit risk assessment plan, or audit program; or

201 (C) other procedural documents necessary to fulfill the duties of the office; and

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

203 (b) The provisions of Subsection (11)(a) do not prohibit the disclosure of records or
204 information to a government prosecutor or peace officer if those records or information relate
205 to a violation of the law by an entity or entity employee.

206 (c) A record, as defined in Section [63G-2-103](#), created by the Office of the Legislative
207 Auditor General in a closed meeting held in accordance with Section [52-4-205](#):

208 (i) is a protected record, as defined in Section [63G-2-103](#);

209 (ii) to the extent the record contains information:

210 (A) described in Section [63G-2-302](#), is a private record; or

211 (B) described in Section [63G-2-304](#), is a controlled record; and

212 (iii) may not be reclassified by the office.

213 (d) The provisions of this section do not limit the authority otherwise given to the
214 legislative auditor general to maintain the private, controlled, or protected record status of a
215 shared record in the legislative auditor general's possession or classify a document as public,
216 private, controlled, or protected under Title 63G, Chapter 2, Government Records Access and
217 Management Act.

218 (12) The legislative auditor general shall:

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

221 (b) conduct special audits as requested by the Audit Subcommittee;

222 (c) report immediately to the Audit Subcommittee any apparent violation of penal
223 statutes disclosed by the audit of an entity and furnish to the Audit Subcommittee all
224 information relative to the apparent violation;

225 (d) report immediately to the Audit Subcommittee any apparent instances of
226 malfeasance or nonfeasance by an entity officer or employee disclosed by the audit of an entity;
227 and

228 (e) make any recommendations to the Audit Subcommittee with respect to the
229 alteration or improvement of the accounting system used by an entity.

230 (13) If the legislative auditor general conducts an audit of an entity that has previously
231 been audited and finds that the entity has not implemented a recommendation made by the
232 legislative auditor general in a previous audit report, the legislative auditor general shall ~~[, upon~~
233 ~~release of the audit:] report to the Audit Subcommittee that the entity has not implemented the~~
234 recommendation.

235 ~~[(a) report immediately to the Audit Subcommittee that the entity has not implemented~~
236 ~~that recommendation; and]~~

237 ~~[(b) shall report, as soon as possible, that the entity has not implemented that~~
238 ~~recommendation to an appropriate legislative committee designated by the Audit~~
239 ~~Subcommittee.]~~

240 (14) Before each annual general session, the legislative auditor general shall:

241 (a) prepare an annual report that:

242 (i) summarizes the audits, examinations, investigations, and reviews conducted by the

243 office since the last annual report; and

244 (ii) evaluate and report the degree to which an entity that has been the subject of an
245 audit has implemented the audit recommendations;

246 (b) include in the report any items and recommendations that the legislative auditor
247 general believes the Legislature should consider in the annual general session; and

248 (c) deliver the report to the Legislature and to the appropriate committees of the
249 Legislature.

250 (15) (a) If the chief officer of an entity has actual knowledge or reasonable cause to
251 believe that there is misappropriation of the entity's public funds or assets, or another entity
252 officer has actual knowledge or reasonable cause to believe that the chief officer is
253 misappropriating the entity's public funds or assets, the chief officer or, alternatively, the other
254 entity officer, shall immediately notify, in writing:

255 (i) the Office of the Legislative Auditor General;

256 (ii) the attorney general, county attorney, or district attorney; and

257 (iii) (A) for a state government organization, the chief executive officer;

258 (B) for a political subdivision government organization, the legislative body or
259 governing board; or

260 (C) for a receiving organization, the governing board or chief executive officer unless
261 the chief executive officer is believed to be misappropriating the funds or assets, in which case
262 the next highest officer of the receiving organization.

263 (b) As described in Subsection (15)(a), the entity chief officer or, if applicable, another
264 entity officer, is subject to the protections of Title 67, Chapter 21, Utah Protection of Public
265 Employees Act.

266 (c) If the Office of the Legislative Auditor General receives a notification under
267 Subsection (15)(a) or other information of misappropriation of public funds or assets of an
268 entity, the office shall inform the Audit Subcommittee.

269 (d) The attorney general, county attorney, or district attorney shall notify, in writing,
270 the Office of the Legislative Auditor General whether the attorney general, county attorney, or
271 district attorney pursued criminal or civil sanctions in the matter.

272 (16) (a) An actor commits interference with a legislative audit if the actor uses force,
273 violence, intimidation, or engages in any other unlawful act with a purpose to interfere with:

274 (i) a legislative audit, examination, investigation, or review of an entity conducted by
275 the Office of the Legislative Auditor General; or

276 (ii) the Office of the Legislative Auditor General's decisions relating to:

277 (A) the content of the office's report;

278 (B) the conclusions reached in the office's report; or

279 (C) the manner of disclosing the results and findings of the office.

280 (b) A violation of Subsection (16)(a) is a class B misdemeanor.

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

285 (b) An employee or applicant for employment shall provide a completed fingerprint
286 card to the office upon request.

287 (c) The Office of the Legislative Auditor General shall require that an individual
288 required to submit to a background check under this Subsection (17) also provide a signed
289 waiver on a form provided by the office that meets the requirements of Subsection
290 [53-10-108](#)(4).

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

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

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

297 Section 3. Section **36-12-15.1** is amended to read:

298 **36-12-15.1. Systemic performance audits.**

299 (1) As used in this section, "entity" means:

300 (a) an entity in the executive branch that receives an ongoing line item appropriation in
301 an appropriations act; and

302 (b) any local education agency, as defined in Section [53E-1-102](#), that receives public
303 funds.

304 (2) (a) Each year, subject to the availability of work capacity and the discretion of the

305 Audit Subcommittee created in Section 36-12-8, the Office of the Legislative Auditor General
306 may, in addition to other audits performed by the office, perform~~[-]~~ a systemic performance
307 audit of:

- 308 (i) ~~[a systemic performance audit of]~~ one or more executive branch entities; ~~[and]~~
309 (ii) ~~[a systemic performance audit of]~~ one or more local education agencies~~[-]~~; and
310 (iii) one or more institutions of higher education.

311 (b) An audit performed under Subsection (2)(a) shall, as is appropriate for each
312 individual audit:

313 (i) evaluate the extent to which the entity has efficiently and effectively used the
314 appropriation by identifying:

- 315 (A) the entity's appropriation history;
316 (B) the entity's spending and efficiency history; and
317 (C) historic trends in the entity's operational performance effectiveness;

318 (ii) evaluate whether the entity's size and operation are commensurate with the entity's
319 spending history;

320 (iii) evaluate whether the entity is diligent in its stewardship of resources;

321 (iv) provide a systemic performance audit of the entity's operations performance
322 improvements;

323 (v) if possible, incorporate the audit methodology of other audits performed by the
324 Office of the Legislative Auditor General; and

325 (vi) be conducted according to the process established for the Audit Subcommittee.

326 (c) After releasing an audit report under Subsection (2)(a), the Audit Subcommittee
327 shall make the audit report available to:

328 (i) each member of the Senate and the House of Representatives; and

329 (ii) the governor or the governor's designee.

330 (d) The Office of the Legislative Auditor General shall:

331 (i) summarize the findings of an audit described in Subsection (2)(a); and

332 (ii) provide a copy of each audit report and the annual report to the legislative fiscal
333 analyst and director of the Office of Legislative Research and General Counsel as soon as each
334 report is completed.

335 (3) The Office of the Legislative Auditor General may consult with the Office of the

336 Legislative Fiscal Analyst or the Office of Legislative Research and General Counsel in
337 preparing the summary required by Subsection (2)(d).

338 (4) The Legislature, in evaluating an entity's request for an increase in its base budget,
339 shall:

340 (a) review the audit report required by this section and any relevant audits; and

341 (b) consider the entity's request for an increase in its base budget in light of the entity's
342 prior history of savings and efficiencies as evidenced by the audit report required by this
343 section.

344 Section 4. Section **36-12-15.3** is enacted to read:

345 **36-12-15.3. Response to audit -- Chief officer -- Entity reporting requirements --**

346 **Audit response plan -- Semi-annual update.**

347 (1) As used in this section:

348 (a) "Alternative action" means a process, practice, or procedure that an entity
349 implements in response to an audit report that is different from the process, practice, or
350 procedure described in a recommendation.

351 (b) "Audit report" means a written report that the office issues that contains the office's
352 findings and recommendations with respect to an audit of an entity.

353 (c) "Audit response plan" means a written document that an entity issues that contains
354 the entity's response to an audit report of the entity.

355 (d) "Audit Subcommittee" means the subcommittee created in Subsection
356 36-12-8(1)(c).

357 (e) "Chief officer" means the individual who holds ultimate authority over the
358 management or governance of an entity.

359 (f) "Entity" means:

360 (i) the same as that term is defined in Subsection 36-12-15(1); or

361 (ii) any other person that the office is authorized to audit under any other provision of
362 law.

363 (g) "Legislative committee" means the committee to which the Audit Subcommittee
364 refers an audit report under Subsection 36-12-8(2)(d)(ii)(C).

365 (h) "Office" means the Office of the Legislative Auditor General.

366 (i) "Recommendation" means a process, practice, or procedure described in an audit

367 report that the office proposes an entity implement.

368 (j) "Reply" means a written document that the office issues that contains the office's
369 response to an entity's audit response plan.

370 (2) In addition to any other information that the office is required to include or attach to
371 an audit report, the office shall, for each audit report the office issues:

372 (a) include in the audit report:

373 (i) the identity of the chief officer; and

374 (ii) a notice to the chief officer that the chief officer must comply with the reporting
375 requirements described in this section; and

376 (b) attach to the audit report:

377 (i) the audit response plan of the entity that is the subject of the audit report; and

378 (ii) at the discretion of the legislative auditor general, a reply to the entity's audit
379 response plan.

380 (3) The chief officer of an entity that is the subject of an audit report shall:

381 (a) prepare an audit response plan that:

382 (i) is in writing;

383 (ii) responds to the findings in the audit report; and

384 (iii) subject to Subsection (4), for each recommendation in the audit report:

385 (A) describes how the entity will implement the recommendation;

386 (B) identifies the individual employed by or otherwise affiliated with the entity who is
387 responsible for implementing the recommendation;

388 (C) establishes a timetable that identifies benchmarks for the entity to implement the
389 recommendation; and

390 (D) specifies an anticipated deadline by which the entity will fully implement the
391 recommendation; and

392 (b) submit the audit response plan to the office before the office submits the audit
393 report to the Audit Subcommittee under Subsection [36-12-15\(6\)\(b\)](#).

394 (4) If the chief officer described in Subsection (3) objects to implementing a
395 recommendation in an audit report, the chief officer shall:

396 (a) prepare an audit response plan in accordance with Subsections (3)(a)(i) and (ii) that:

397 (i) explains the basis for the objection; and

398 (ii) (A) identifies an alternative action that the entity will implement; or
399 (B) specifies that the entity will not implement the recommendation or an alternative
400 action; and

401 (b) comply with submission requirements described in Subsection (3)(b).

402 (5) A chief officer implementing an alternative action under Subsection (4)(a)(ii)(A)
403 shall, as it relates to the alternative action, include in the audit response plan the information
404 described in Subsection (3)(a)(iii).

405 (6) Subject to Subsection (8), if the chief officer of an entity that is the subject of an
406 audit report implements a recommendation under Subsection (3)(a)(iii), or an alternative action
407 under Subsections (4)(a)(ii)(A) and (5), the chief officer shall, no later than 180 days after the
408 day on which the Audit Subcommittee refers the audit report to a legislative committee:

409 (a) prepare an update to the entity's audit response plan that:

410 (i) is in writing; and

411 (ii) describes the entity's progress towards fully implementing:

412 (A) each recommendation addressed in the entity's audit response plan under
413 Subsection (3)(a)(iii); or

414 (B) each alternative action addressed in the entity's audit response plan under
415 Subsections (4)(a)(ii)(A) and (5); and

416 (b) submit the update to the legislative committee and the legislative auditor general.

417 (7) Subject to Subsection (8), after the chief officer described in Subsection (6)

418 complies with the submission requirements described in Subsection (6)(b), the chief officer
419 shall:

420 (a) continue to update the audit response plan in accordance with Subsection (6)(a);

421 and

422 (b) submit the update to the legislative committee and the legislative auditor general at
423 least semi-annually.

424 (8) A chief officer's obligation to update an audit response plan under this section
425 terminates when the legislative auditor general reports to the Audit Subcommittee that the
426 entity which is the subject of the audit report has fully implemented:

427 (a) each recommendation addressed in the entity's audit response plan under
428 Subsection (3)(a)(iii); or

429 (b) each alternative action addressed in the entity's audit response plan under

430 Subsections (4)(a)(ii)(A) and (5).

431 Section 5. **Effective date.**

432 This bill takes effect on May 1, 2024.