

LEGISLATIVE AUDITOR GENERAL AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Melissa G. Ballard

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill amends provisions related to legislative oversight of government entities.

Highlighted Provisions:

This bill:

- ▶ specifies that the Office of the Legislative Auditor General may provide training to certain entities;
- ▶ requires the Office of the Legislative Auditor General to develop policies for designating a finding or recommendation as critical;
- ▶ requires the Office of the Legislative Auditor General to report on audit recommendations that have not been fully implemented;
- ▶ requires an agency to conduct a self-assessment as part of the legislative budget review process; and
- ▶ make technical and conforming 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 2023, Chapter 21



28 **63J-1-903**, as last amended by Laws of Utah 2023, Chapters 24, 409

29

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

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

32 **36-12-15. Office of the Legislative Auditor General established -- Qualifications --**
33 **Powers, functions, and duties -- Reporting -- Criminal penalty -- Employment.**

34 (1) As used in this section:

35 (a) "Entity" means:

36 (i) a government organization; or

37 (ii) a receiving organization.

38 (b) "Government organization" means:

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

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

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

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

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

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

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

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

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

58 (b) prepare and submit a written report on each audit, examination, investigation, or

59 review to the Audit Subcommittee created in Section [36-12-8](#) and make the report available to
60 all members of the Legislature within 75 days after the audit, examination, investigation, or
61 review is completed;

62 (c) monitor, conduct a risk assessment of, or audit any efficiency evaluations that the
63 legislative auditor general determines necessary, in accordance with Title 63J, Chapter 1, Part
64 9, Government Performance Reporting and Efficiency Process, and legislative rule;

65 (d) at the discretion of the legislative auditor general, provide training to staff of:

66 (i) an entity that is the subject of an audit or assessment described in this Subsection

67 (6)(a) or (6)(c);

68 (ii) a program or operation that is identified as high risk as described in this Subsection

69 (6)(e); and

70 (iii) a funding item that increases state funding as described in Subsection

71 [63J-1-903\(4\)\(b\)](#);

72 ~~(d)~~ (e) create, manage, and report to the Audit Subcommittee a list of high risk
73 programs and operations that:

74 (i) threaten public funds or programs;

75 (ii) are vulnerable to inefficiency, waste, fraud, abuse, or mismanagement; or

76 (iii) require transformation;

77 ~~(e)~~ (f) monitor and report to the Audit Subcommittee the health of a government
78 organization's internal audit functions;

79 ~~(f)~~ (g) make recommendations to increase the independence and value added of
80 internal audit functions throughout the state;

81 (h) in consultation with the Audit Subcommittee, develop and maintain internal
82 policies and standards for designating a finding or recommendation as critical, based on best
83 practices found within the areas of the legislative auditor general's professional competence;

84 ~~(g)~~ (i) implement a process to track, monitor, and report whether the subject of an
85 audit has implemented recommendations made in the audit report;

86 (j) at least two weeks before the first interim meeting of the year, provide to each
87 interim committee and appropriations committee to which audit recommendations have been
88 assigned by the Audit Subcommittee, a report of any audit recommendations that have not been
89 fully implemented with those recommendations highlighted;

- 90 ~~[(h)]~~ (k) establish, train, and maintain individuals within the office to conduct
- 91 investigations and represent themselves as lawful investigators on behalf of the office;
- 92 ~~[(i)]~~ (l) establish policies, procedures, methods, and standards of audit work and
- 93 investigations for the office and staff;
- 94 ~~[(j)]~~ (m) prepare and submit each audit and investigative report independent of any
- 95 influence external of the office, including the content of the report, the conclusions reached in
- 96 the report, and the manner of disclosing the legislative auditor general's findings;
- 97 ~~[(k)]~~ (n) prepare and submit the annual budget request for the office; and
- 98 ~~[(l)]~~ (o) perform other duties as prescribed by the Legislature.

99 (7) In conducting an audit, examination, investigation, or review of an entity, the
100 Office of the Legislative Auditor General may include a determination of any or all of the
101 following:

- 102 (a) the honesty and integrity of any of the entity's fiscal affairs;
- 103 (b) the accuracy and reliability of the entity's internal control systems and specific
- 104 financial statements and reports;
- 105 (c) whether or not the entity's financial controls are adequate and effective to properly
- 106 record and safeguard the entity's acquisition, custody, use, and accounting of public funds;
- 107 (d) whether the entity's administrators have complied with legislative intent;
- 108 (e) whether the entity's operations have been conducted in an efficient, effective, and
- 109 cost efficient manner;
- 110 (f) whether the entity's programs have been effective in accomplishing intended
- 111 objectives; and
- 112 (g) whether the entity's management control and information systems are adequate and
- 113 effective.

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

- 120 (i) the following in the possession or custody of the entity in the format identified by

121 the office:

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

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

124 (ii) entity personnel; and

125 (iii) each official or unofficial recording of formal or informal meetings or

126 conversations to which the entity has access.

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

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

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

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

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

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

143 (11) (a) The following records in the custody or control of the legislative auditor
144 general are protected records under Title 63G, Chapter 2, Government Records Access and
145 Management Act:

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

151 (ii) records and audit workpapers that would disclose the identity of a person who,

152 during the course of a legislative audit, communicated the existence of:

153 (A) unethical behavior;

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

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

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

161 (iv) records that would disclose:

162 (A) an outline;

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

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

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

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

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

171 (i) is a protected record, as defined in Section 63G-2-103;

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

173 (A) described in Section 63G-2-302, is a private record; or

174 (B) described in Section 63G-2-304, is a controlled record; and

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

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

181 (12) The legislative auditor general shall:

182 (a) be available to the Legislature and to the Legislature's committees for consultation

183 on matters relevant to areas of the legislative auditor general's professional competence;

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

185 (c) report immediately to the Audit Subcommittee any apparent violation of penal

186 statutes disclosed by the audit of an entity and furnish to the Audit Subcommittee all

187 information relative to the apparent violation;

188 (d) report immediately to the Audit Subcommittee any apparent instances of

189 malfeasance or nonfeasance by an entity officer or employee disclosed by the audit of an entity;

190 and

191 (e) make any recommendations to the Audit Subcommittee with respect to the

192 alteration or improvement of the accounting system used by an entity.

193 (13) If the legislative auditor general conducts an audit of an entity that has previously

194 been audited and finds that the entity has not implemented a recommendation made by the

195 legislative auditor general in a previous audit, the legislative auditor general shall, upon release

196 of the audit:

197 (a) report immediately to the Audit Subcommittee that the entity has not implemented

198 that recommendation; and

199 (b) shall report, as soon as possible, that the entity has not implemented that

200 recommendation to an appropriate legislative committee designated by the Audit

201 Subcommittee.

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

203 (a) prepare an annual report that:

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

205 office since the last annual report; and

206 (ii) evaluate and report the degree to which an entity that has been the subject of an

207 audit has implemented the audit recommendations;

208 (b) include in the report any items and recommendations that the legislative auditor

209 general believes the Legislature should consider in the annual general session; and

210 (c) deliver the report to the Legislature and to the appropriate committees of the

211 Legislature.

212 (15) (a) If the chief officer of an entity has actual knowledge or reasonable cause to

213 believe that there is misappropriation of the entity's public funds or assets, or another entity

214 officer has actual knowledge or reasonable cause to believe that the chief officer is
215 misappropriating the entity's public funds or assets, the chief officer or, alternatively, the other
216 entity officer, shall immediately notify, in writing:

- 217 (i) the Office of the Legislative Auditor General;
- 218 (ii) the attorney general, county attorney, or district attorney; and
- 219 (iii) (A) for a state government organization, the chief executive officer;
- 220 (B) for a political subdivision government organization, the legislative body or
- 221 governing board; or

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

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

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

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

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

- 236 (i) a legislative audit, examination, investigation, or review of an entity conducted by
237 the Office of the Legislative Auditor General; or
- 238 (ii) the Office of the Legislative Auditor General's decisions relating to:
 - 239 (A) the content of the office's report;
 - 240 (B) the conclusions reached in the office's report; or
 - 241 (C) the manner of disclosing the results and findings of the office.

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

243 (17) (a) Beginning July 1, 2020, the Office of the Legislative Auditor General may
244 require any current employee, or any applicant for employment, to submit to a

245 fingerprint-based local, regional, and criminal history background check as an ongoing
246 condition of employment.

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

249 (c) The Office of the Legislative Auditor General shall require that an individual
250 required to submit to a background check under this Subsection (17) also provide a signed
251 waiver on a form provided by the office that meets the requirements of Subsection
252 53-10-108(4).

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

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

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

259 Section 2. Section **63J-1-903** is amended to read:

260 **63J-1-903. Performance measure and funding item reporting.**

261 (1) The Governor's Office of Planning and Budget and the Office of the Legislative
262 Fiscal Analyst may develop an information system to collect, track, and publish agency
263 performance measures.

264 (2) Each executive department agency shall:

265 (a) in consultation with the Governor's Office of Planning and Budget and the Office of
266 the Legislative Fiscal Analyst, develop performance measures to include in an appropriations
267 act for each fiscal year; and

268 (b) on or before August 15 of each calendar year, provide to the Governor's Office of
269 Planning and Budget and the Office of the Legislative Fiscal Analyst:

270 (i) any recommendations for legislative changes for the next fiscal year to the agency's
271 previously adopted performance measures or targets; and

272 (ii) a report of the final status of the agency's performance measures included in the
273 appropriations act for the fiscal year ending the previous June 30.

274 (3) Each judicial department agency shall:

275 (a) develop performance measures to include in an appropriations act for each fiscal

276 year; and

277 (b) annually submit to the Office of the Legislative Fiscal Analyst a report that
278 contains:

279 (i) any recommendations for legislative changes for the next fiscal year to the agency's
280 previously adopted performance measures; and

281 (ii) the final status of the agency's performance measures included in the appropriations
282 act for the fiscal year ending the previous June 30.

283 (4) Within 21 days after the day on which the Legislature adjourns a legislative session
284 sine die, the Governor's Office of Planning and Budget and the Office of the Legislative Fiscal
285 Analyst shall:

286 (a) create a list of funding items passed during the legislative session;

287 (b) from the list described in Subsection (4)(a), identify in a sublist each funding item
288 that increases state funding by \$500,000 or more from state funds; and

289 (c) provide the lists described in this subsection to each executive department agency
290 and the Office of the Legislative Auditor General.

291 (5) Each executive department agency shall provide to the Governor's Office of
292 Planning and Budget and the Office of the Legislative Fiscal Analyst:

293 (a) for each funding item on the list described in Subsection (4)(b), within 60 days after
294 the day on which the Legislature adjourns a legislative session sine die:

295 (i) one or more proposed performance measures; and

296 (ii) a target for each performance measure described in Subsection (5)(a)(i); and

297 (b) for each funding item on the list described in Subsection (4)(a), on or before August
298 15 of each year after the close of the fiscal year in which the funding item was first funded, a
299 report that includes:

300 (i) the status of each performance measure relative to the measure's target as described
301 in Subsection (5)(a), if applicable;

302 (ii) the actual amount the agency spent, if any, on the funding item; and

303 (iii) (A) the month and year in which the agency implemented the program or project
304 associated with the funding item; or

305 (B) if the program or project associated with the funding item is not fully implemented,
306 the month and year in which the agency anticipates fully implementing the program or project

307 associated with the funding item.

308 (6) (a) After an executive department agency provides proposed performance measures
309 in accordance with Subsection (5)(a), the Governor's Office of Planning and Budget and the
310 Office of the Legislative Fiscal Analyst shall review the proposed performance measures and,
311 if necessary, coordinate with the executive department agency to modify and finalize the
312 performance measures.

313 (b) The Governor's Office of Planning and Budget, the Office of the Legislative Fiscal
314 Analyst, and the executive department agency shall finalize each proposed performance
315 measure before July 1.

316 (7) The Governor's Office of Planning and Budget and the Office of the Legislative
317 Fiscal Analyst may jointly request that an executive department agency provide the report
318 required under Subsection (5)(b) in a different fiscal year than the fiscal year in which the
319 funding item was first funded or in multiple fiscal years.

320 (8) The Governor's Office of Planning and Budget shall:

321 (a) review at least 20% of the performance measures described in Subsection (2)
322 annually; and

323 (b) ensure that the Governor's Office of Planning and Budget reviews each
324 performance measure described in Subsection (2) at least once every five years.

325 (9) The Office of the Legislative Fiscal Analyst shall review the performance measures
326 described in Subsection (2) on a schedule that aligns with the appropriations subcommittee's
327 applicable accountable budget process described in legislative rule.

328 (10) (a) The Office of the Legislative Fiscal Analyst shall report the relevant
329 performance measure information described in this section to the Executive Appropriations
330 Committee and the appropriations subcommittees, as appropriate.

331 (b) The Governor's Office of Planning and Budget shall report the relevant
332 performance measure information described in this section to the governor.

333 (11) (a) Each executive department agency, when the agency's budget is subject to a
334 legislative appropriations subcommittee's accountable budget process, shall:

335 ~~[(a)]~~ (i) conduct a thorough evaluation of the agency's performance measures, internal
336 budget process, ~~[and budget controls; and]~~ budget controls, organizational culture, and
337 adherence to best practices through the self-assessment tools developed by the Office of the

338 Legislative Auditor General;

339 (ii) create a list of potential efficiencies, reallocations of resources, or other changes
340 that the executive department agency could consider as improvements, including combining
341 units, investing in technology or other services, reducing or eliminating positions or programs,
342 implementing audit recommendations or evaluation findings, or other changes; and

343 [~~(b)~~] (iii) submit the results of the evaluation and the list of potential efficiencies to the
344 legislative appropriations subcommittee and the Office of the Legislative Auditor General.

345 (b) As soon as reasonably possible after the Office of the Legislative Fiscal Analyst
346 schedules an accountable budget process review for an executive branch agency, the Office of
347 the Legislative Fiscal Analyst shall give notice to the executive department agency:

348 (i) that the executive department agency has been scheduled for an accountable budget
349 process review;

350 (ii) of the general timeline and requirements for the review process, and any relevant
351 dates or scheduled meetings that have been set at that time in relation to the process; and

352 (iii) that the executive department agency is required to promptly complete the
353 requirements of Subsection (11)(a).

354 **Section 3. Effective date.**

355 This bill takes effect on May 1, 2024.