

HB0412S01 compared with HB0412

~~{deleted text}~~ shows text that was in HB0412 but was deleted in HB0412S01.

inserted text shows text that was not in HB0412 but was inserted into HB0412S01.

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Representative Melissa G. Ballard proposes the following substitute bill:

LEGISLATIVE AUDITOR GENERAL AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: { } Melissa G. Ballard

Senate Sponsor: { } _____

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} amends the requirements for an agency to conduct a self-assessment as part of the legislative budget review process; and

HB0412S01 compared with HB0412

- ▶ 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~~

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

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

Section 1. Section ~~{36-12-15}~~**63J-1-903** is amended to read:

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

~~—— (1) As used in this section:~~

~~—— (a) "Entity" means:~~

~~—— (i) a government organization; or~~

~~—— (ii) a receiving organization.~~

~~—— (b) "Government organization" means:~~

~~—— (i) a state branch, department, or agency; or~~

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

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

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

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

~~—— (4) The legislative auditor general shall appoint and develop a professional staff within~~

HB0412S01 compared with HB0412

budget limitations:

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

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

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

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

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

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

~~—— (i) an entity that is the subject of an audit or assessment described in this Subsection (6)(a) or (6)(c);~~

~~—— (ii) a program or operation that is identified as high risk as described in this Subsection (6)(c); and~~

~~—— (iii) a funding item that increases state funding as described in Subsection 63J-1-903(4)(b);~~

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

~~—— (i) threaten public funds or programs;~~

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

~~—— (iii) require transformation;~~

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

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

~~—— (h) in consultation with the Audit Subcommittee, develop and maintain internal~~

HB0412S01 compared with HB0412

~~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;~~

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

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

~~—— [(h)] (k) establish, train, and maintain individuals within the office to conduct investigations and represent themselves as lawful investigators on behalf of the office;~~

~~—— [(i)] (l) establish policies, procedures, methods, and standards of audit work and investigations for the office and staff;~~

~~—— [(j)] (m) prepare and submit each audit and investigative report independent of any influence external of the office, including the content of the report, the conclusions reached in the report, and the manner of disclosing the legislative auditor general's findings;~~

~~—— [(k)] (n) prepare and submit the annual budget request for the office; and~~

~~—— [(l)] (o) perform other duties as prescribed by the Legislature.~~

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

~~—— (a) the honesty and integrity of any of the entity's fiscal affairs;~~

~~—— (b) the accuracy and reliability of the entity's internal control systems and specific financial statements and reports;~~

~~—— (c) whether or not the entity's financial controls are adequate and effective to properly record and safeguard the entity's acquisition, custody, use, and accounting of public funds;~~

~~—— (d) whether the entity's administrators have complied with legislative intent;~~

~~—— (e) whether the entity's operations have been conducted in an efficient, effective, and cost efficient manner;~~

~~—— (f) whether the entity's programs have been effective in accomplishing intended objectives; and~~

~~—— (g) whether the entity's management control and information systems are adequate and~~

HB0412S01 compared with HB0412

effective:

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

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

~~—— (A) a record, document, and report; and~~

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

~~—— (ii) entity personnel; and~~

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

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

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

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

~~—— (10) 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.~~

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

HB0412S01 compared with HB0412

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

~~—— (i) records and audit work papers that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a past or present governmental 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;~~

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

~~—— (A) unethical behavior;~~

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

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

~~—— (iii) before 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 an entity for review, response, or information;~~

~~—— (iv) records that would disclose:~~

~~—— (A) an outline;~~

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

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

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

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

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

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

~~—— (ii) to the extent the record contains information:~~

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

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

HB0412S01 compared with HB0412

~~—— (iii) may not be reclassified by the office.~~

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

~~—— (12) The legislative auditor general shall:~~

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

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

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

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

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

~~—— (13) If the legislative auditor general conducts an audit of an entity that has previously been audited and finds that the entity 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 to the Audit Subcommittee that the entity has not implemented that recommendation; and~~

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

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

~~—— (a) prepare an annual report that:~~

~~—— (i) summarizes the audits, examinations, investigations, and reviews conducted by the office since the last annual report; and~~

HB0412S01 compared with HB0412

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

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

~~—— (c) deliver the report to the Legislature and to the appropriate committees of the Legislature.~~

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

~~—— (i) the Office of the Legislative Auditor General;~~

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

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

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

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

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

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

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

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

~~—— (i) a legislative audit, examination, investigation, or review of an entity conducted by~~

HB0412S01 compared with HB0412

~~the Office of the Legislative Auditor General; or~~

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

~~—— (A) the content of the office's report;~~

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

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

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

~~—— (17) (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.~~

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

~~—— (d) 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.~~

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

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

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

(2) Each executive department agency shall:

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

HB0412S01 compared with HB0412

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

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

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

(3) Each judicial department agency shall:

(a) develop performance measures to include in an appropriations act for each fiscal year; and

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

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

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

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

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

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

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

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

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

(i) one or more proposed performance measures; and

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

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

HB0412S01 compared with HB0412

report that includes:

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

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

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

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

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

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

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

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

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

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

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

(10) (a) The Office of the Legislative Fiscal Analyst shall report the relevant performance measure information described in this section to the Executive Appropriations

HB0412S01 compared with HB0412

Committee and the appropriations subcommittees, as appropriate.

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

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

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

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

~~—— { (b) } (iii) } and~~

{ (b) } submit the results of the evaluation { ~~and the list of potential efficiencies~~ } to the legislative appropriations subcommittee { } and the Office of the Legislative Auditor General.

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

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

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

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

~~{ } Section ~~{3}~~2. **Effective date.**~~

This bill takes effect on May 1, 2024.