

Brady Brammer proposes the following substitute bill:

Legislative Audit Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brady Brammer

House Sponsor: Jordan D. Teuscher

LONG TITLE

General Description:

This bill enacts provisions related to certain information provided to the legislative auditor general.

Highlighted Provisions:

This bill:

- restates the authority of the legislative auditor general;
- excludes certain information provided to the legislative auditor general from the definition of "record";
- permits an entity to provide certain privileged items to the legislative auditor general;
- requires an entity that withholds certain privileged items from the legislative auditor general to expressly assert a privilege;
- permits the legislative auditor general to contest privilege claim;
- requires, in certain circumstances, an entity to submit privileged items to an arbitrator to determine a privilege claim;
- coordinates enactment of provisions with S.J.R. 4, Joint Resolution Amending Court Rules on Attorney Confidentiality; and
- makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

36-12-15, as last amended by Laws of Utah 2024, Third Special Session, Chapter 3

Utah Code Sections affected by Coordination Clause:

36-12-15, as last amended by Laws of Utah 2024, Third Special Session, Chapter 3

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

The following section is affected by a coordination clause at the end of this bill.

Section 1. Section 36-12-15 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) "Audit action" means an audit, examination, investigation, or review of an entity conducted by the office.

(b) "Entity" means:

(i) a government organization; or

(ii) a receiving organization.

(c) "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.

(d) "Office" means the Office of the Legislative Auditor General.

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

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

(b) The authority of the legislative auditor general is:

(i) established in Utah Constitution, Article VI, Section 33; and

(ii) an extension of the Legislature's inherent inquiry and investigatory power.

(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 budget limitations.

(5) The office shall exercise the constitutional authority provided in Utah Constitution, Article VI, Section 33.

(6) Under the direction of the legislative auditor general, the office 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 action 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 action 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) 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) monitor and report to the Audit Subcommittee the health of a government organization's internal audit functions;
 - (f) make recommendations to increase the independence and value added of internal audit functions throughout the state;
 - (g) implement a process to track, monitor, and report whether the subject of an audit has implemented recommendations made in the audit report;
 - (h) establish, train, and maintain individuals within the office to conduct investigations and represent themselves as lawful investigators on behalf of the office;
 - (i) establish policies, procedures, methods, and standards of audit work and investigations for the office and staff;
 - (j) 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) prepare and submit the annual budget request for the office; and
 - (l) perform other duties as prescribed by the Legislature.
- (7) In conducting an audit action of an entity, the office 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 effective.

(8)(a) If requested by the office, 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)(a) As used in this Subsection (10), "privileged item" means an attorney-client

communication, attorney work product, or information relating to representation of the entity, governed by:

(i) Utah Rules of Professional Conduct, Rule 1.6;

(ii) Utah Rules of Evidence, Rule 504; or

(iii) Utah Rules of ~~§~~ → [Professional Conduct, Rule 1.6] Civil

Procedure, Rule 26 ← § .

(b) ~~§~~ → [A lawyer is expressly authorized to provide confidential information on the entity] ← §

~~§~~ → [client's behalf under] If an entity discloses information to the

legislative auditor general that is confidential under ← § Utah Rules of

Professional Conduct, Rule 1.6 ~~§~~ → [(b)(6)] , the disclosure is

authorized in accordance with Utah Rules of Professional Conduct, Rule 1.6(6)(b),

and does not make the information discoverable or prevent the entity from claiming

that the information is privileged in another proceeding ← § .

(c) If requested by the legislative auditor general for an audit action, an entity may provide a privileged item.

(d) If an entity withholds a privileged item after a request by the legislative auditor general for an audit action, the entity shall, for each instance in which the entity asserts privilege, submit to the legislative auditor general a written statement:

(i) expressly asserting the privilege and the authority for the privilege claim; and

(ii) for each privilege claim, describing the nature of the privileged item in a manner that, without revealing the attorney-client communication, attorney work product, or information itself, will enable the legislative auditor general to evaluate the privilege claim.

(e)(i) The legislative auditor general may contest a privilege claim asserted under Subsection (10)(d) by submitting the privilege claim to an arbitrator, selected by the office, for review.

~~§~~ → (ii) The office shall select as the arbitrator an individual who:

(A) is licensed to practice law in the state of Utah; and

(B) does not have a known, direct, or material interest in the outcome of the

arbitration proceeding or a known, existing, or substantial relationship with the

entity or, except for selection by the office for the arbitration, the office.

~~[(ii)] (iii) ← §~~ The legislative auditor general shall provide to the entity:

(A) notification in writing of each contested privilege claim; and

(B) the arbitrator's information.

§→ ~~[(iii)]~~ (iv) ←§ The entity:

(A) shall provide to the arbitrator the privileged item described in the contested privilege claim no later than seven business days after receiving the written notification described in Subsection §→ ~~[(10)(e)(ii)]~~ (10)(e)(iii) ←§

; and

(B) may provide supplemental information in support of a privilege claim.

§→ ~~[(iv)]~~ (v) ←§ No later than seven business days after the arbitrator receives the privileged item

under Subsection §→ ~~[(10)(e)(iii)]~~ (10)(e)(iv) ←§ , the arbitrator shall:

(A) conduct an in camera review of the privileged item and authority for the relevant privilege claim;

(B) review supplemental information submitted under Subsection §→ [

~~(10)(e)(iii)(B)]~~ (10)(e)(iv)(B) ←§

and any supplemental information provided by the legislative auditor general; and

(C) issue a determination as to whether the entity has a valid claim of privilege, favoring access to the legislative auditor general §→ **of material that is not privileged** ←§ .

§→ ~~[(v)]~~ (vi) ←§ If the arbitrator determines that an entity does not have a valid privilege claim, the entity shall:

(A) provide the withheld information, material, resource, or communication to the legislative auditor general; and

(B) reimburse the legislative auditor general for compensation of the arbitrator.

(f) The arbitrator may not disclose:

(i) a privileged item; or

(ii) supplemental information described in Subsection §→ ~~[(10)(e)(iii)(B)]~~

~~(10)(e)(iv)(B)~~ ←§ .

(g) Provisions of Subsection (10)(e) are not subject to Title 78B, Chapter 11, Utah Uniform Arbitration Act.

178 ~~[(10)]~~ (11) To preserve the professional integrity and independence of the office:

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

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

184 ~~[(11)]~~ (12)(a) The following records in the custody or control of the legislative auditor
185 general are protected records under Title 63G, Chapter 2, Government Records
186 Access and Management Act:

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

193 (ii) records and audit workpapers that would disclose the identity of a person who,
194 during the course of a legislative audit, communicated the existence of:
195 (A) unethical behavior;
196 (B) waste of public funds, property, or personnel; or
197 (C) a violation or suspected violation of a United States, Utah state, or political
198 subdivision law, rule, ordinance, or regulation, if the person disclosed on the
199 condition that the identity of the person be protected;

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

203 (iv) records that would disclose:

204 (A) an outline;

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

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

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

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

211 (c) A record, as defined in Section 63G-2-103, created by the office 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

(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.

(e) If provided to the legislative auditor general, the following are not a record, as defined in Section 63G-2-103:

(i) a privileged item, as defined in Subsection (10)(a); and

(ii) supplemental information described in Subsection ~~§~~ → [(10)(e)(iii)(B)]

(10)(e)(iv)(B) ← ~~§~~ .

[(12)] (13) 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)] (14) 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 report, the legislative auditor general shall report to the Audit Subcommittee that the entity has not implemented the recommendation.

[(14)] (15) 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

(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)] (16)(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;

(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)] (16)(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)] (16)(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)] (17)(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 action; or
- (ii) the office'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)] (17)(a) is a class B misdemeanor.
- [(17)] (18)(a) The office 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 shall require that an individual required to submit to a background check under this Subsection [(17)] (18) 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.
- [(18)] (19) Subject to prioritization of the Legislative Audit Subcommittee, the Office of the Legislative Auditor General shall conduct a feasibility study under Section 53G-3-301.1, 53G-3-301.3, or 53G-3-301.4.

Section 2. Effective Date.

This bill takes effect on May 7, 2025.

Section 3. Coordinating S.B. 154 with S.J.R. 4 if S.J.R. 4 does not pass.

If S.J.R. 4, Joint Resolution Amending Court Rules on Attorney Confidentiality, does not pass, the Legislature intends that S.B. 154, Legislative Audit Amendments, not be enrolled and not become law.