

1 **GOVERNMENT ENTITY COMPLIANCE AMENDMENTS**

2 2023 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ryan D. Wilcox**

5 Senate Sponsor: Luz Escamilla

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses public reporting relating to certain obligations of a government
10 actor.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ requires the Office of Legislative Research and General Counsel to publicly post
14 certain information relating to:
- 15 • reports required to be provided to a legislative committee; and
 - 16 • policies required to be adopted by a government actor;
- 17 ▶ requires the state auditor to publicly post certain information relating to policies
18 required to be adopted by a government actor; and
- 19 ▶ permits the state auditor to conduct an inquiry to determine whether a government
20 actor has complied with certain legal requirements imposed by recent legislation.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 This bill provides a special effective date.

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **67-3-1**, as last amended by Laws of Utah 2022, Chapter 307

28 ENACTS:

29 **36-12-12.1**, Utah Code Annotated 1953

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

Section 1. Section **36-12-12.1** is enacted to read:

36-12-12.1. Posting of required reports and policies -- Compliance.

The Office of Legislative Research and General Counsel shall maintain a page on the Legislature's website that provides the following information:

(1) an annual list of all reports that a government entity, government official, or government employee is required to submit to a committee of the Legislature, including for each:

(a) a brief description of the report;

(b) the name of the committee to which submission is required;

(c) the report submission deadline;

(d) a citation to the law requiring the report;

(e) an indication regarding whether the report is timely submitted, submitted late, or not submitted;

(f) an indication regarding whether the report contained the information required by law; and

(g) a link to the report; and

(2) an annual list of each bill that becomes law that year that requires a government entity, government official, or government employee to adopt a policy, including for each:

(a) the bill number and short title;

(b) a citation to the law requiring the policy;

(c) a brief description of the policy;

(d) a list of the government entities, government officials, or government employees required to adopt the policy;

(e) the deadline for adopting the policy; and

(f) a link to the information described in Subsection [67-3-1\(21\)](#).

Section 2. Section **67-3-1** is amended to read:

58 **67-3-1. Functions and duties.**

59 (1) (a) The state auditor is the auditor of public accounts and is independent of any
60 executive or administrative officers of the state.

61 (b) The state auditor is not limited in the selection of personnel or in the determination
62 of the reasonable and necessary expenses of the state auditor's office.

63 (2) The state auditor shall examine and certify annually in respect to each fiscal year,
64 financial statements showing:

65 (a) the condition of the state's finances;

66 (b) the revenues received or accrued;

67 (c) expenditures paid or accrued;

68 (d) the amount of unexpended or unencumbered balances of the appropriations to the
69 agencies, departments, divisions, commissions, and institutions; and

70 (e) the cash balances of the funds in the custody of the state treasurer.

71 (3) (a) The state auditor shall:

72 (i) audit each permanent fund, each special fund, the General Fund, and the accounts of
73 any department of state government or any independent agency or public corporation as the law
74 requires, as the auditor determines is necessary, or upon request of the governor or the
75 Legislature;

76 (ii) perform the audits in accordance with generally accepted auditing standards and
77 other auditing procedures as promulgated by recognized authoritative bodies; and

78 (iii) as the auditor determines is necessary, conduct the audits to determine:

79 (A) honesty and integrity in fiscal affairs;

80 (B) accuracy and reliability of financial statements;

81 (C) effectiveness and adequacy of financial controls; and

82 (D) compliance with the law.

83 (b) If any state entity receives federal funding, the state auditor shall ensure that the
84 audit is performed in accordance with federal audit requirements.

85 (c) (i) The costs of the federal compliance portion of the audit may be paid from an

86 appropriation to the state auditor from the General Fund.

87 (ii) If an appropriation is not provided, or if the federal government does not
88 specifically provide for payment of audit costs, the costs of the federal compliance portions of
89 the audit shall be allocated on the basis of the percentage that each state entity's federal funding
90 bears to the total federal funds received by the state.

91 (iii) The allocation shall be adjusted to reflect any reduced audit time required to audit
92 funds passed through the state to local governments and to reflect any reduction in audit time
93 obtained through the use of internal auditors working under the direction of the state auditor.

94 (4) (a) Except as provided in Subsection (4)(b), the state auditor shall, in addition to
95 financial audits, and as the auditor determines is necessary, conduct performance and special
96 purpose audits, examinations, and reviews of any entity that receives public funds, including a
97 determination of any or all of the following:

98 (i) the honesty and integrity of all the entity's fiscal affairs;

99 (ii) whether the entity's administrators have faithfully complied with legislative intent;

100 (iii) whether the entity's operations have been conducted in an efficient, effective, and
101 cost-efficient manner;

102 (iv) whether the entity's programs have been effective in accomplishing the intended
103 objectives; and

104 (v) whether the entity's management, control, and information systems are adequate,
105 effective, and secure.

106 (b) The auditor may not conduct performance and special purpose audits,
107 examinations, and reviews of any entity that receives public funds if the entity:

108 (i) has an elected auditor; and

109 (ii) has, within the entity's last budget year, had the entity's financial statements or
110 performance formally reviewed by another outside auditor.

111 (5) The state auditor:

112 (a) shall administer any oath or affirmation necessary to the performance of the duties
113 of the auditor's office; and

- 114 (b) may:
- 115 (i) subpoena witnesses and documents, whether electronic or otherwise; and
- 116 (ii) examine into any matter that the auditor considers necessary.
- 117 (6) The state auditor may require all persons who have had the disposition or
- 118 management of any property of this state or its political subdivisions to submit statements
- 119 regarding the property at the time and in the form that the auditor requires.
- 120 (7) The state auditor shall:
- 121 (a) except where otherwise provided by law, institute suits in Salt Lake County in
- 122 relation to the assessment, collection, and payment of revenues against:
- 123 (i) persons who by any means have become entrusted with public money or property
- 124 and have failed to pay over or deliver the money or property; and
- 125 (ii) all debtors of the state;
- 126 (b) collect and pay into the state treasury all fees received by the state auditor;
- 127 (c) perform the duties of a member of all boards of which the state auditor is a member
- 128 by the constitution or laws of the state, and any other duties that are prescribed by the
- 129 constitution and by law;
- 130 (d) stop the payment of the salary of any state official or state employee who:
- 131 (i) refuses to settle accounts or provide required statements about the custody and
- 132 disposition of public funds or other state property;
- 133 (ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling
- 134 board or department head with respect to the manner of keeping prescribed accounts or funds;
- 135 or
- 136 (iii) fails to correct any delinquencies, improper procedures, and errors brought to the
- 137 official's or employee's attention;
- 138 (e) establish accounting systems, methods, and forms for public accounts in all taxing
- 139 or fee-assessing units of the state in the interest of uniformity, efficiency, and economy;
- 140 (f) superintend the contractual auditing of all state accounts;
- 141 (g) subject to Subsection (8)(a), withhold state allocated funds or the disbursement of

142 property taxes from a state or local taxing or fee-assessing unit, if necessary, to ensure that
143 officials and employees in those taxing units comply with state laws and procedures in the
144 budgeting, expenditures, and financial reporting of public funds;

145 (h) subject to Subsection (9), withhold the disbursement of tax money from any county,
146 if necessary, to ensure that officials and employees in the county comply with Section
147 [59-2-303.1](#); and

148 (i) withhold state allocated funds or the disbursement of property taxes from a local
149 government entity or a limited purpose entity, as those terms are defined in Section [67-1a-15](#) if
150 the state auditor finds the withholding necessary to ensure that the entity registers and
151 maintains the entity's registration with the lieutenant governor, in accordance with Section
152 [67-1a-15](#).

153 (8) (a) Except as otherwise provided by law, the state auditor may not withhold funds
154 under Subsection (7)(g) until a state or local taxing or fee-assessing unit has received formal
155 written notice of noncompliance from the auditor and has been given 60 days to make the
156 specified corrections.

157 (b) If, after receiving notice under Subsection (8)(a), a state or independent local
158 fee-assessing unit that exclusively assesses fees has not made corrections to comply with state
159 laws and procedures in the budgeting, expenditures, and financial reporting of public funds, the
160 state auditor:

161 (i) shall provide a recommended timeline for corrective actions;

162 (ii) may prohibit the state or local fee-assessing unit from accessing money held by the
163 state; and

164 (iii) may prohibit a state or local fee-assessing unit from accessing money held in an
165 account of a financial institution by filing an action in district court requesting an order of the
166 court to prohibit a financial institution from providing the fee-assessing unit access to an
167 account.

168 (c) The state auditor shall remove a limitation on accessing funds under Subsection
169 (8)(b) upon compliance with state laws and procedures in the budgeting, expenditures, and

170 financial reporting of public funds.

171 (d) If a local taxing or fee-assessing unit has not adopted a budget in compliance with
172 state law, the state auditor:

173 (i) shall provide notice to the taxing or fee-assessing unit of the unit's failure to
174 comply;

175 (ii) may prohibit the taxing or fee-assessing unit from accessing money held by the
176 state; and

177 (iii) may prohibit a taxing or fee-assessing unit from accessing money held in an
178 account of a financial institution by:

179 (A) contacting the taxing or fee-assessing unit's financial institution and requesting that
180 the institution prohibit access to the account; or

181 (B) filing an action in district court requesting an order of the court to prohibit a
182 financial institution from providing the taxing or fee-assessing unit access to an account.

183 (e) If the local taxing or fee-assessing unit adopts a budget in compliance with state
184 law, the state auditor shall eliminate a limitation on accessing funds described in Subsection
185 (8)(d).

186 (9) The state auditor may not withhold funds under Subsection (7)(h) until a county has
187 received formal written notice of noncompliance from the auditor and has been given 60 days
188 to make the specified corrections.

189 (10) (a) The state auditor may not withhold funds under Subsection (7)(i) until the state
190 auditor receives a notice of non-registration, as that term is defined in Section 67-1a-15.

191 (b) If the state auditor receives a notice of non-registration, the state auditor may
192 prohibit the local government entity or limited purpose entity, as those terms are defined in
193 Section 67-1a-15, from accessing:

194 (i) money held by the state; and

195 (ii) money held in an account of a financial institution by:

196 (A) contacting the entity's financial institution and requesting that the institution
197 prohibit access to the account; or

198 (B) filing an action in district court requesting an order of the court to prohibit a
199 financial institution from providing the entity access to an account.

200 (c) The state auditor shall remove the prohibition on accessing funds described in
201 Subsection (10)(b) if the state auditor received a notice of registration, as that term is defined in
202 Section 67-1a-15, from the lieutenant governor.

203 (11) Notwithstanding Subsection (7)(g), (7)(h), (7)(i), (8)(b), (8)(d), or (10)(b), the
204 state auditor:

205 (a) shall authorize a disbursement by a local government entity or limited purpose
206 entity, as those terms are defined in Section 67-1a-15, or a state or local taxing or fee-assessing
207 unit if the disbursement is necessary to:

208 (i) avoid a major disruption in the operations of the local government entity, limited
209 purpose entity, or state or local taxing or fee-assessing unit; or

210 (ii) meet debt service obligations; and

211 (b) may authorize a disbursement by a local government entity, limited purpose entity,
212 or state or local taxing or fee-assessing unit as the state auditor determines is appropriate.

213 (12) (a) The state auditor may seek relief under the Utah Rules of Civil Procedure to
214 take temporary custody of public funds if an action is necessary to protect public funds from
215 being improperly diverted from their intended public purpose.

216 (b) If the state auditor seeks relief under Subsection (12)(a):

217 (i) the state auditor is not required to exhaust the procedures in Subsection (7) or (8);
218 and

219 (ii) the state treasurer may hold the public funds in accordance with Section 67-4-1 if a
220 court orders the public funds to be protected from improper diversion from their public
221 purpose.

222 (13) The state auditor shall:

223 (a) establish audit guidelines and procedures for audits of local mental health and
224 substance abuse authorities and their contract providers, conducted pursuant to Title 17,
225 Chapter 43, Part 2, Local Substance Abuse Authorities, Title 17, Chapter 43, Part 3, Local

226 Mental Health Authorities, Title 51, Chapter 2a, Accounting Reports from Political
227 Subdivisions, Interlocal Organizations, and Other Local Entities Act, and Title 62A, Chapter
228 15, Substance Abuse and Mental Health Act; and

229 (b) ensure that those guidelines and procedures provide assurances to the state that:

230 (i) state and federal funds appropriated to local mental health authorities are used for
231 mental health purposes;

232 (ii) a private provider under an annual or otherwise ongoing contract to provide
233 comprehensive mental health programs or services for a local mental health authority is in
234 compliance with state and local contract requirements, and state and federal law;

235 (iii) state and federal funds appropriated to local substance abuse authorities are used
236 for substance abuse programs and services; and

237 (iv) a private provider under an annual or otherwise ongoing contract to provide
238 comprehensive substance abuse programs or services for a local substance abuse authority is in
239 compliance with state and local contract requirements, and state and federal law.

240 (14) (a) The state auditor may, in accordance with the auditor's responsibilities for
241 political subdivisions of the state as provided in Title 51, Chapter 2a, Accounting Reports from
242 Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, initiate audits or
243 investigations of any political subdivision that are necessary to determine honesty and integrity
244 in fiscal affairs, accuracy and reliability of financial statements, effectiveness, and adequacy of
245 financial controls and compliance with the law.

246 (b) If the state auditor receives notice under Subsection 11-41-104(7) from the
247 Governor's Office of Economic Opportunity on or after July 1, 2024, the state auditor may
248 initiate an audit or investigation of the public entity subject to the notice to determine
249 compliance with Section 11-41-103.

250 (15) (a) The state auditor may not audit work that the state auditor performed before
251 becoming state auditor.

252 (b) If the state auditor has previously been a responsible official in state government
253 whose work has not yet been audited, the Legislature shall:

- 254 (i) designate how that work shall be audited; and
255 (ii) provide additional funding for those audits, if necessary.
- 256 (16) The state auditor shall:
- 257 (a) with the assistance, advice, and recommendations of an advisory committee
258 appointed by the state auditor from among local district boards of trustees, officers, and
259 employees and special service district boards, officers, and employees:
- 260 (i) prepare a Uniform Accounting Manual for Local Districts that:
- 261 (A) prescribes a uniform system of accounting and uniform budgeting and reporting
262 procedures for local districts under Title 17B, Limited Purpose Local Government Entities -
263 Local Districts, and special service districts under Title 17D, Chapter 1, Special Service
264 District Act;
- 265 (B) conforms with generally accepted accounting principles; and
266 (C) prescribes reasonable exceptions and modifications for smaller districts to the
267 uniform system of accounting, budgeting, and reporting;
- 268 (ii) maintain the manual under this Subsection (16)(a) so that the manual continues to
269 reflect generally accepted accounting principles;
- 270 (iii) conduct a continuing review and modification of procedures in order to improve
271 them;
- 272 (iv) prepare and supply each district with suitable budget and reporting forms; and
273 (v) (A) prepare instructional materials, conduct training programs, and render other
274 services considered necessary to assist local districts and special service districts in
275 implementing the uniform accounting, budgeting, and reporting procedures; and
276 (B) ensure that any training described in Subsection (16)(a)(v)(A) complies with Title
277 63G, Chapter 22, State Training and Certification Requirements; and
278 (b) continually analyze and evaluate the accounting, budgeting, and reporting practices
279 and experiences of specific local districts and special service districts selected by the state
280 auditor and make the information available to all districts.
- 281 (17) (a) The following records in the custody or control of the state auditor are

282 protected records under Title 63G, Chapter 2, Government Records Access and Management
283 Act:

284 (i) records that would disclose information relating to allegations of personal
285 misconduct, gross mismanagement, or illegal activity of a past or present governmental
286 employee if the information or allegation cannot be corroborated by the state auditor through
287 other documents or evidence, and the records relating to the allegation are not relied upon by
288 the state auditor in preparing a final audit report;

289 (ii) records and audit workpapers to the extent the workpapers would disclose the
290 identity of an individual who during the course of an audit, communicated the existence of any
291 waste of public funds, property, or manpower, or a violation or suspected violation of a law,
292 rule, or regulation adopted under the laws of this state, a political subdivision of the state, or
293 any recognized entity of the United States, if the information was disclosed on the condition
294 that the identity of the individual be protected;

295 (iii) before an audit is completed and the final audit report is released, records or drafts
296 circulated to an individual who is not an employee or head of a governmental entity for the
297 individual's response or information;

298 (iv) records that would disclose an outline or part of any audit survey plans or audit
299 program; and

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

301 (b) The provisions of Subsections (17)(a)(i), (ii), and (iii) do not prohibit the disclosure
302 of records or information that relate to a violation of the law by a governmental entity or
303 employee to a government prosecutor or peace officer.

304 (c) The provisions of this Subsection (17) do not limit the authority otherwise given to
305 the state auditor to classify a document as public, private, controlled, or protected under Title
306 63G, Chapter 2, Government Records Access and Management Act.

307 (d) (i) As used in this Subsection (17)(d), "record dispute" means a dispute between the
308 state auditor and the subject of an audit performed by the state auditor as to whether the state
309 auditor may release a record, as defined in Section [63G-2-103](#), to the public that the state

310 auditor gained access to in the course of the state auditor's audit but which the subject of the
311 audit claims is not subject to disclosure under Title 63G, Chapter 2, Government Records
312 Access and Management Act.

313 (ii) The state auditor may submit a record dispute to the State Records Committee,
314 created in Section [63G-2-501](#), for a determination of whether the state auditor may, in
315 conjunction with the state auditor's release of an audit report, release to the public the record
316 that is the subject of the record dispute.

317 (iii) The state auditor or the subject of the audit may seek judicial review of a State
318 Records Committee determination under Subsection (17)(d)(ii), as provided in Section
319 [63G-2-404](#).

320 (18) If the state auditor conducts an audit of an entity that the state auditor has
321 previously audited and finds that the entity has not implemented a recommendation made by
322 the state auditor in a previous audit, the state auditor shall notify the Legislative Management
323 Committee through the Legislative Management Committee's audit subcommittee that the
324 entity has not implemented that recommendation.

325 (19) The state auditor shall, with the advice and consent of the Senate, appoint the state
326 privacy officer described in Section [67-3-13](#).

327 (20) The state auditor shall report, or ensure that another government entity reports, on
328 the financial, operational, and performance metrics for the state system of higher education and
329 the state system of public education, including metrics in relation to students, programs, and
330 schools within those systems.

331 (21) The state auditor shall, based on the information posted by the Office of
332 Legislative Research and General Counsel under Subsection [36-12-12.1\(2\)](#), for each policy,
333 track and post the following information on the state auditor's website:

334 (a) the information posted under Subsections [36-12-12.1\(2\)\(a\)](#) through (e);

335 (b) an indication regarding whether the policy is timely adopted, adopted late, or not
336 adopted;

337 (c) an indication regarding whether the policy complies with the requirements

338 established by law for the policy; and

339 (d) a link to the policy.

340 (22) (a) A legislator may request that the state auditor conduct an inquiry to determine
341 whether a government entity, government official, or government employee has complied with
342 a legal obligation directly imposed, by statute, on the government entity, government official,
343 or government employee.

344 (b) The state auditor may, upon receiving a request under Subsection (22)(a), conduct
345 the inquiry requested.

346 (c) If the state auditor conducts the inquiry described in Subsection (22)(b), the state
347 auditor shall post the results of the inquiry on the state auditor's website.

348 (d) The state auditor may limit the inquiry described in this Subsection (22) to a simple
349 determination, without conducting an audit, regarding whether the obligation was fulfilled.

350 **Section 3. Effective date.**

351 This bill takes effect on July 1, 2023.