



Date: December 16, 2020

To: Members of the Legislative Audit Commission

From: Jim Nobles, Legislative Auditor

Subject: Proposed Amendments to OLA Statutes

In this memorandum, we present several possible changes to statutes that affect OLA. Rather than separate them into controversial and noncontroversial proposals, we decided it would be more appropriate to present all of the possibilities for your consideration and have you decide which changes are noncontroversial and could, therefore, appropriately be included in a commission-sponsored “housekeeping” bill.

Following each proposed amendment, we comment on why we are proposing the change.

- 1. Proposed Amendment:** *Minnesota Statutes* 2020, 3.971, is amended by adding the following subdivision:

**Subd. 8a. Special Reviews.** The legislative auditor may conduct a special review to: (1) fulfill a legal requirement; (2) investigate allegations that an individual or organization subject to audit by the legislative auditor may not have complied with legal requirements related to the use of public money, other public resources, or government data classified as not public; (3) respond to a legislative request for a review of an organization or program subject to audit by the legislative auditor; or (4) investigate allegations that an individual may not have complied with Minnesota Statutes, 43A.38 or 43A.39.

**Reason for Proposed Amendment.** In addition to audits and evaluations, OLA conducts a third type of examination to respond to unanticipated allegations, requests, and legal requirements. In the past, OLA called them “investigations” because *Minnesota Statutes* 2020, 3.971, subd. 6, has a provision that says, “The legislative auditor shall see that all provisions of law respecting the appropriate and economic use of public funds and other public resources are complied with and may, as part of a financial audit or separately, investigate allegations of noncompliance.” We propose this amendment to acknowledge that OLA now calls this aspect of our work “special reviews.” The amendment would not expand OLA’s current authority or jurisdiction.

**2. Proposed Amendment:** *Minnesota Statutes* 2020, 3.971, subd. 2, is amended to read:

**Subd. 2. Staff; compensation.**

(a) The legislative auditor shall establish a Financial Audits Division and a Program Evaluation Division to fulfill the duties prescribed in this section.

(b) Each division may be supervised by a deputy auditor, appointed by the legislative auditor, with the approval of the commission, for a term coterminous with the legislative auditor's term. The deputy auditors may be removed before the expiration of their terms only for cause. The legislative auditor and deputy auditors may each appoint an administrative support specialist ~~confidential secretary~~ to serve at their pleasure. The salaries and benefits of the legislative auditor, deputy auditors, and ~~confidential secretaries~~ administrative support specialists shall be determined by the compensation plan approved by the Legislative Coordinating Commission. The deputy auditors may perform and exercise the powers, duties, and responsibilities imposed by law on the legislative auditor when authorized by the legislative auditor.

~~(c) The legislative auditor must appoint a fiscal oversight officer with duties that include performing the review under section 3.972, subdivision 4.~~

~~(d)~~ The legislative auditor, deputy auditors, and ~~the confidential secretaries~~ administrative support specialists shall serve in the unclassified civil service, but ~~the fiscal oversight officer~~ and all other employees of the legislative auditor ~~shall serve~~ are in the classified civil service. Compensation for employees of the legislative auditor in the classified service shall be governed by a plan prepared by the legislative auditor and approved by the Legislative Coordinating Commission and the legislature under section 3.855, subdivision 3.

~~(e)~~ While in office, a person appointed deputy for the Financial Audit Division must hold an active license as a certified public accountant.

~~(e) Minnesota Statutes, section 43A.32, subdivisions 2 and 3, do not apply to an employee of the legislative auditor. An employee of the legislative auditor may not be a candidate for an elected public office.~~

**Reason for Proposed Amendment**

(b) The OLA staff currently called "confidential secretary" are responsible for a range of office-wide administrative support functions; they are not just confidential secretaries to the Legislative Auditor and two deputies. Therefore, we propose this name change to more fully reflect their duties and responsibilities.

(c) This provision should be eliminated; the required "fiscal oversight officer" is no longer needed since the duties of that officer were repealed in 2019.

(d) These are technical changes made to conform this paragraph to changes in other paragraphs.

(e) Most OLA employees are in the state's classified civil service, and because *Minnesota Statutes*, 43A.32, subdivisions 2 and 3, grant classified employees options to run for partisan offices, they are incompatible with the nonpartisan character of OLA. Subdivision 2 says that a classified employee shall "upon request, be granted leave of absence upon becoming a candidate, or during the course of candidacy, for any elected public office." Even if on a leave of absence, we think it is incompatible for an OLA employee to run for an elected public office.

Subdivision 3 presents an even more incompatible option; it says that no classified employee “may be required to take a leave of absence upon becoming a candidate, or during the course of candidacy, for any elected public office.” Again, we think it would be unacceptable for an individual to work at OLA while running for an elected public office.

**3. Proposed Amendment.** *Minnesota Statutes* 2020, 3.972, subd. 2, is amended to read:

**Subd. 2. Audits of state and semistate agencies.**

The legislative auditor shall, ~~as resources permit, make a constant~~ audit the ~~of all financial affairs activities~~ of all departments, ~~and agencies, offices, and other organizations in the state executive branch; of the state, courts, offices, and other organizations in the state judicial branch; and of the financial records and transactions of~~ public boards, associations, and societies, ~~and other public organizations created by state law or supported, wholly or in part, by state funds. Once in each year, if funds and personnel permit, without previous notice, In conducting these audits, the~~ legislative auditor shall determine whether financial transaction and operations involving public funds and other public resources comply with applicable laws and standards of effective financial management. ~~visit each state department and agency, association or society and, so far as practicable,~~

~~(1) inspect;~~

~~(2) thoroughly examine its books and accounts, verifying the funds, securities, and other assets;~~

~~(3) check the items of receipts and disbursements with its voucher records;~~

~~(4) ascertain the character of the official bonds for its officers and the financial ability of the bonding institution;~~

~~(5) inspect its sources of revenue and the use and disposition of state appropriations and property;~~

~~(6) investigate the methods of purchase and sale and the character of contracts on public account;~~

~~(7) ascertain proper custody and depository for its funds and securities;~~

~~(8) verify the inventory of public property and other assets held in trust; and~~

~~(9) ascertain that all financial transactions and operations involving the public funds and property of the state comply with the spirit and purpose of the law are sound by modern standards of financial management and are for the best protection of the public interest.~~

**Reason for Proposed Amendment**

This proposed amendment eliminates antiquated statutory language.

**4. Proposed Amendment.** *Minnesota Statutes* 2020, 3.972, subd. 2(a), is amended to read:

**Subd. 2(a). Audits of Department of Human Services.**

(a) To ensure ~~continuous effective~~ legislative oversight and accountability, the legislative auditor shall give high priority to auditing the programs, services, and benefits administered by the Department of Human Services. ~~The audits shall determine whether the department~~

~~offered programs and provided services and benefits. As resources permit, the legislative auditor shall track and assess expenditures throughout the human service delivery system, from the department to the point of service delivery, and determine whether human services programs, services, and benefits are being provided cost-effectively and only to eligible persons—individuals and organizations,—and complied in compliance with applicable legal requirements.~~

~~(b) The legislative auditor shall, based on an assessment of risk and using professional standards to provide a statistically significant sample, no less than three times each year, test a representative sample of persons enrolled in a medical assistance program or MinnesotaCare to determine whether they are eligible to receive benefits under those programs. The legislative auditor shall report the results to the commissioner of human services and recommend corrective actions. The commissioner shall provide a response to the legislative auditor within 20 business days, including corrective actions to be taken to address any problems identified by the legislative auditor and anticipated completion dates. The legislative auditor shall monitor the commissioner's implementation of corrective actions and periodically report the results to the Legislative Audit Commission and the chairs and ranking minority members of the legislative committees with jurisdiction over health and human services policy and finance. The legislative auditor's reports to the commission and the chairs and ranking minority members must include recommendations for any legislative actions needed to ensure that medical assistance and MinnesotaCare benefits are provided only to eligible persons.~~

#### **Reason for Proposed Amendment**

This proposed amendment clarifies that OLA is to not only give priority to auditing programs, services, and benefits administered by the Department of Human Services, but OLA is also to “track and assess expenditures throughout the human service delivery system.” The proposed amendment would eliminate current language we consider unnecessary or overly prescriptive.

#### **5. Proposed Amendment.** *Minnesota Statutes* 2020, 3.978, subd. 2, is amended to read:

##### **Subd. 2. Inquiry and inspection power; duty to aid legislative auditor.**

All public officials and their deputies and employees, and all corporations, firms, and individuals having business involving the receipt, disbursement, or custody of public funds shall at all times afford reasonable facilities for examinations by the legislative auditor, make returns and reports required by the legislative auditor, attend and answer under oath the legislative auditor’s lawful inquiries, produce and exhibit all books, accounts, documents, data of any classification, and property that the legislative auditor ~~may need~~ requests to inspect, and in all things cooperate with ~~aid~~ the legislative auditor ~~in the performance of duties~~.

#### **Reason for Proposed Amendment**

We request this amendment because we have had an organization we were auditing interpret the existing language as allowing that organization to decide whether OLA needed access to certain data and documents to conduct the audit. To maintain independence, an auditor must have the sole authority to decide what data and documents are needed for an audit.

**6. Proposed Amendment.** *Minnesota Statutes 2020, 3.979, subd. 1, is amended to read:*

**Subd. 1. Data Practices.** The legislative auditor is subject to the Government Data Practices Act, chapter 13, and shall protect from unlawful disclosure data classified as not public by chapter 13 and this section. ~~If data provided by the legislative auditor to the commission is disseminated by the commission or its members or agents in violation of section 13.05, subdivision 4, the commission is subject to liability under section 13.08, subdivisions 1 and 3.~~

**Reason for Proposed Amendment**

We propose this amendment and the next one because a law that allows Legislative Audit Commission members the ability to access not public data in OLA files makes it uncertain that OLA can protect the privacy of the not public data individuals and organizations are required to provide OLA.

**7. Proposed Amendment.** *Minnesota Statutes 2020, 3.979, subd. 2, is amended to read:*

**Subd. 2. Access to data ~~by commission members.~~**

The legislative auditor shall not provide any person with access to not public data except as authorized by chapter 13 or this section. ~~Members of the commission have access to data that is collected or used by the legislative auditor and classified as not public or as private or confidential only as authorized by resolution of the commission. The commission may not authorize its members to have access to private or confidential data on individuals collected or used in connection with the collection of any tax.~~

**Reason for Proposed Amendment**

Although the commission has never used this authority, as noted above, we think the fact that a law provides a method for the commission to have access to not public data in OLA files creates a question as to whether OLA can maintain the privacy of not public data we obtain from individuals and organizations.

**8. Proposed Amendment.** *Minnesota Statutes 2020, 3.979, subd. 3, is amended to read:*

**Subd. 3. Audit data.**

(a) "Audit" as used in this subdivision means a financial audit, special review, program evaluation, ~~best practices review,~~ or investigation. Data relating to an audit are not public or with respect to data on individuals are confidential until the final report of the audit has been released by the legislative auditor or the audit is no longer being actively pursued. Upon release of a final audit report by the legislative auditor, data relating to an audit are public except data otherwise classified as not public.

(b) Data related to an audit but not published in the audit report and that the legislative auditor reasonably believes will be used in litigation are not public and with respect to data on individuals are confidential until the litigation has been completed or is no longer being actively pursued.

(c) Data ~~on individuals~~ that could reasonably be used to determine the identity of an individual supplying data for an audit are private if the data supplied by the individual were needed for an audit and the individual would not have provided the data to the legislative

auditor without an assurance that the individual's identity would remain private, or the legislative auditor reasonably believes that the subject would not have provided the data.

(d) The definitions of terms provided in section 13.02 apply for purposes of this subdivision.

**Reason for Proposed Amendment.**

It is possible that data “not on individuals” can be used to determine the identity of an individual that provided OLA with not public data with an assurance that OLA would protect the individual’s identity from disclosure. Therefore, this provision should not just be limited to “data on individuals.”

**9. Proposed Amendment.** *Minnesota Statutes 2020*, 16A.06, is amended by adding the following subdivision:

**Subd. 12. Audit of state’s use of federal funds.** The commissioner shall contract with a qualified auditor to conduct the annual audit required by the United States Single Audit Act of 1984, Public Law 98-502, the Single Audit Act Amendments of 1996, Public Law 104-156, and Title 2 United States Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). There is annually appropriated from the general fund to Minnesota Management and Budget an amount sufficient to pay the cost of the annual audit. The cost of the audit shall be considered a statewide indirect cost as defined in section 16A.127.

**Reason for Proposed Amendment.**

Requiring MMB to contract for this federally mandated audit will allow OLA to conduct more audits that will yield information useful to the Minnesota legislators. MMB has said that it does not oppose the change.

**10. Repealers.**

*Minnesota Statutes 2020*, 3.972, subs. 2c and 2d; 3.9741, subd. 5; and 299D.03, subd. 2a, are repealed.

**Reason for Repealers**

- *Minnesota Statutes 2020*, section 3.972, subs. 2c and 2d, mandate audits of the Department of Transportation and the Department of Public Safety, respectively. We think these provisions are unnecessary since they require audits that are part of OLA’s normal audit schedule.
- *Minnesota Statutes 2020*, 3.9741, subd. 5, which was enacted in 2014, mandates a detailed audit of the process the Department of Public Safety uses to sell driver records and established a special revenue fund to pay for the audits. However, Governor Dayton vetoed the provision that dedicated revenue in the account to the Legislative Auditor to conduct the audits. As a result, we request that the audit mandate be repealed.
- *Minnesota Statutes 2020*, 299D.03, subd. 2a, enacted in 2020, mandates OLA to conduct ongoing surveys of compensation and benefits provided to law enforcement officers in specified police departments and in the State Patrol. While we are currently conducting a special review related to this mandate, we think the statutory mandate for additional

surveys should be repealed. Conducting compensation and benefit surveys is not directly related to OLA's mission.

In addition, we understand that the purpose of the mandate was to produce data to help legislators evaluate compensation and benefits for State Patrol officers, and the Legislature recently increased State Patrol compensation without needing data from OLA. It is our understanding that the Department of Management and Budget agreed in its most recent negotiations with the State Patrol's bargaining representative to conduct the surveys.

## OLA Budget Options

OLA was asked to prepare budget options for the Legislative Audit Commission to discuss. The table below reflects possible budget options for FY 2022.

	Explanation	Annual Appropriation	Comments
<b>Option 1</b>	10% Reduction	\$7,466,400	Would result in 9-10 positions eliminated
<b>Option 2</b>	5% Reduction	\$7,881,200	Would result in 4-5 positions eliminated
<b>Option 3</b>	Status Quo	\$8,296,000	Additional flexibility regarding DHS dedicated funds and Single Audit may allow us to dedicate more staff to special reviews or other priorities.
<b>Option 4</b>	Add 2 Special Review Staff	\$8,483,178	Would create a team of 3 staff to handle special reviews
<b>Option 5</b>	Add 2 IT Audit Staff	\$8,547,390	Would create a team of 4 IT auditors to provide oversight of state's IT systems

NOTES: Figures assume current salary levels and use FY 2021 appropriations as the base.



# MINNESOTA STATUTES 2020

## 3.97 LEGISLATIVE AUDIT COMMISSION.

**Subdivision 1. Policy.** Continuous legislative review of the spending of public funds and financing at all levels of government is required in the public interest to enable the enactment of appropriate legislation.

**Subd. 2. Membership; terms; meetings; compensation; powers.** The Legislative Audit Commission consists of:

- (1) three members of the senate appointed by the Subcommittee on Committees of the Committee on Rules and Administration of the senate;
- (2) three members of the senate appointed by the senate minority leader;
- (3) three members of the house of representatives appointed by the speaker of the house; and
- (4) three members of the house of representatives appointed by the house of representatives minority leader.

Members shall serve until replaced, or until they are not members of the legislative body from which they were appointed. Appointing authorities shall fill vacancies on the commission within 30 days of a vacancy being created.

The commission shall meet in January of each odd-numbered year to elect its chair and vice-chair. They shall serve until successors are elected. The chair and vice-chair shall alternate biennially between the senate and the house of representatives. The commission shall meet at the call of the chair. The members shall serve without compensation but be reimbursed for their reasonable expenses as members of the legislature. The commission may exercise the powers prescribed by section [3.153](#).

**Subd. 3.** [Repealed, [2006 c 262 s 2](#)]

**Subd. 3a. Evaluation topics.** The commission shall periodically select topics for the legislative auditor to evaluate. Topics may include any agency, program, or activity established by law to achieve a state purpose, or any topic that affects the operation of state government. The commission shall give primary consideration to topics that are likely, upon examination, to produce recommendations for cost savings, increased productivity, or the elimination of duplication among public agencies. The commission shall also give consideration to programs and statutory provisions that authorize grants, tax incentives, and other inducements for economic development. Legislators and legislative committees may suggest topics for evaluation, but the legislative auditor shall only conduct evaluations approved by the commission.

**Subd. 3b. Review of financial management and internal controls.** The commission shall review legislative auditor reports and make recommendations, as the commission determines necessary, for improvements in the state's system of internal controls and financial management.

**Subd. 4.** [Renumbered [3.971, subdivision 1](#)]

**Subd. 5.** [Renumbered [3.971, subd 2](#)]

**Subd. 6.** [Renumbered [3.971, subd 3a](#)]

**Subd. 7.** [Renumbered [3.971, subd 4](#)]

**Subd. 8.** [Renumbered [3.971, subd 5](#)]

**Subd. 9.** [Renumbered [3.979, subdivision 1](#)]

**Subd. 10.** [Renumbered [3.979, subd 2](#)]

**Subd. 11.** [Renumbered [3.979, subd 3](#)]

**Subd. 11a.** [Renumbered [3.979, subd 4](#)]

**Subd. 12.** [Renumbered subd 3a]

**History:** [1973 c 492 s 12](#); [1973 c 720 s 76](#) subd 2; [1975 c 204 s 90](#); [1980 c 484 s 1-3](#); [1981 c 311 s 39](#); [1982 c 545 s 24](#); [1983 c 317 s 1](#); [1985 c 248 s 70](#); [1986 c 444](#); [1988 c 469 art 1 s 1](#); [1989 c 351 s 1](#); [1991 c 345 art 1 s 38](#); [1993 c 4 s 5](#); [1994 c 632 art 3 s 15](#); [1997 c 184 s 1](#); [1999 c 99 s 1,23](#); [1Sp2001 c 10 art 2 s 10](#); [2006 c 262 s 1](#); [2007 c 13 art 1 s 1](#); [2009 c 101 art 2 s 3](#); [1Sp2019 c 10 art 2 s 3](#)

### **3.971 LEGISLATIVE AUDITOR.**

**Subdivision 1. Appointment and term.** The legislative auditor is the executive secretary of the commission. The legislative auditor shall be appointed by the commission for a six-year term and serve in the unclassified service. When in office, the legislative auditor may not at any time hold any other public office. The legislative auditor may not be removed from office before the expiration of the term of service except for cause after public hearing.

**Subd. 2. Staff; compensation.** (a) The legislative auditor shall establish a Financial Audits Division and a Program Evaluation Division to fulfill the duties prescribed in this section.

(b) Each division may be supervised by a deputy auditor, appointed by the legislative auditor, with the approval of the commission, for a term coterminous with the legislative auditor's term. The deputy auditors may be removed before the expiration of their terms only for cause. The legislative auditor and deputy auditors may each appoint a confidential secretary to serve at pleasure. The salaries and benefits of the legislative auditor, deputy auditors and confidential secretaries shall be determined by the compensation plan approved by the Legislative Coordinating Commission. The deputy auditors may perform and exercise the powers, duties and responsibilities imposed by law on the legislative auditor when authorized by the legislative auditor.

(c) The legislative auditor must appoint a fiscal oversight officer with duties that include performing the review under section [3.972, subdivision 4](#).

(d) The deputy auditors and the confidential secretaries serve in the unclassified civil service, but the fiscal oversight officer and all other employees of the legislative auditor are in the classified civil service. Compensation for employees of the legislative auditor in the classified service shall be governed by a plan prepared by the legislative auditor and approved by the Legislative Coordinating Commission and the legislature under section [3.855, subdivision 3](#).

(e) While in office, a person appointed deputy for the Financial Audit Division must hold an active license as a certified public accountant.

**Subd. 3.** [Repealed, [1998 c 366 s 90](#)]

**Subd. 3a. Transfer of powers, duties, and responsibilities.** All the powers, duties, and responsibilities of the Department of Public Examiner relating to the state of Minnesota, its departments and agencies as described in Minnesota Statutes 1971, section [215.03](#), and any other law concerning powers, duties, and responsibilities of the public examiner not otherwise dealt with by [Laws 1973, chapter 492](#), are transferred to the legislative auditor. Nothing in this subdivision shall supersede the powers conferred upon the commissioner of management and budget under section [16A.055](#).

**Subd. 4. Prescribed duties.** In addition to the legislative auditing duties concerning state financial matters, the legislative auditor shall also exercise and perform duties prescribed by rule of the legislature or either body of it or by the commission.

**Subd. 5. Testimonial powers.** The legislature may, by rule, provide to the legislative auditor the testimonial powers that are conferred by law on legislative standing commissions or committees.

**Subd. 6. Financial audits.** The legislative auditor shall audit the financial statements of the state of Minnesota required by section [16A.50](#) and, as resources permit, Minnesota State Colleges and Universities, the University of Minnesota, state agencies, departments, boards, commissions, offices, courts, and other organizations subject to audit by the legislative auditor, including, but not limited to, the State Agricultural Society, Agricultural

Utilization Research Institute, Enterprise Minnesota, Inc., Minnesota Historical Society, ClearWay Minnesota, Minnesota Sports Facilities Authority, Metropolitan Council, Metropolitan Airports Commission, and Metropolitan Mosquito Control District. Financial audits must be conducted according to generally accepted government auditing standards. The legislative auditor shall see that all provisions of law respecting the appropriate and economic use of public funds and other public resources are complied with and may, as part of a financial audit or separately, investigate allegations of noncompliance.

**Subd. 6a. Data security audits.** The legislative auditor shall audit, as resources permit, information and data systems supported with public funds and operated by an organization listed in subdivision 6. The audits shall include an assessment of controls designed to protect government data, particularly government data classified as not public by chapter 13, from unauthorized access and use. The audits shall also include an assessment of organizations' compliance with other applicable legal requirements related to the operation of information and data systems and proper classification and protection of the data contained in the systems.

**Subd. 7. Program evaluations.** The legislative auditor shall conduct program evaluations to determine the degree to which the activities and programs entered into or funded by the state are accomplishing their goals and objectives, including a critical analysis of goals and objectives, measurement of program results and effectiveness, alternative means of achieving the same results, and efficiency in the allocation of resources. The legislative auditor shall recommend ways to improve the effectiveness of the programs, reduce the cost of providing state services, and eliminate services of one agency that overlap with or duplicate the services performed by another agency. At the direction of the commission the legislative auditor may conduct program evaluations of any state department, board, commission, or agency and any metropolitan agency, board, or commission created under chapter 473; or any program or activity established or funded, in whole or in part, by the state. After an evaluation report has been released, the legislative auditor may periodically conduct a follow-up review to assess what changes have occurred.

**Subd. 8.** [Repealed, [1Sp2003 c 1 art 2 s 136](#)]

**Subd. 9. Obligation to notify the legislative auditor.** The chief executive, financial, or information officers of an organization subject to audit under this section must promptly notify the legislative auditor when the officer obtains information indicating that public money or other public resources may have been used for an unlawful purpose, or when the officer obtains information indicating that government data classified by chapter 13 as not public may have been accessed by or provided to a person without lawful authorization. As necessary, the legislative auditor shall coordinate an investigation of the allegation with appropriate law enforcement officials.

**History:** ([53-13](#), [3286-9](#), [3286-16](#)) [1925 c 426 art 3 s 10](#); [1939 c 431 art 4 s 2,9](#); [1949 c 33 s 1](#); [1973 c 492 s 12,27](#); [1973 c 720 s 76](#) subd 2; [1975 c 204 s 90,91](#); [1980 c 484 s 1-3](#); [1981 c 311 s 39](#); [1982 c 545 s 24](#); [1983 c 317 s 1](#); [1984 c 638 s 1](#); [1985 c 248 s 70](#); [1986 c 444](#); [1988 c 469 art 1 s 1](#); [1988 c 703 art 1 s 7](#); [1989 c 351 s 1](#); [1991 c 345 art 1 s 38,39](#); [1993 c 4 s 5](#); [1993 c 192 s 35](#); [1994 c 632 art 3 s 15,16](#); [1997 c 184 s 1,2](#); [1998 c 325 s 1](#); [1999 c 99 s 2,23](#); [1Sp2003 c 1 art 2 s 2](#); [2008 c 194 s 2](#); [2008 c 290 s 2](#); [2009 c 101 art 2 s 4,109](#); [2012 c 299 art 1 s 2](#); [2013 c 142 art 3 s 5-7](#); [1Sp2017 c 4 art 2 s 4,5](#); [1Sp2019 c 10 art 2 s 4](#)

### **3.972 AUDITS OF AGENCIES.**

**Subdivision 1. Public accountant.** For the purposes of this section, "public accountant" means a certified public accountant or certified public accounting firm licensed in accordance with chapter 326A.

**Subd. 2. Audits of state and semistate agencies.** The legislative auditor shall make a constant audit of all financial affairs of all departments and agencies of the state, and of the financial records and transactions of public boards, associations, and societies supported, wholly or in part, by state funds. Once in each year, if funds and personnel permit, without previous notice, the legislative auditor shall visit each state department and agency, association or society and, so far as practicable,

- (1) inspect;
- (2) thoroughly examine its books and accounts, verifying the funds, securities, and other assets;

- (3) check the items of receipts and disbursements with its voucher records;
- (4) ascertain the character of the official bonds for its officers and the financial ability of the bonding institution;
- (5) inspect its sources of revenue and the use and disposition of state appropriations and property;
- (6) investigate the methods of purchase and sale and the character of contracts on public account;
- (7) ascertain proper custody and depository for its funds and securities;
- (8) verify the inventory of public property and other assets held in trust; and
- (9) ascertain that all financial transactions and operations involving the public funds and property of the state comply with the spirit and purpose of the law, are sound by modern standards of financial management and are for the best protection of the public interest.

**Subd. 2a. Audits of Department of Human Services.** (a) To ensure continuous legislative oversight and accountability, the legislative auditor shall give high priority to auditing the programs, services, and benefits administered by the Department of Human Services. The audits shall determine whether the department offered programs and provided services and benefits only to eligible persons and organizations, and complied with applicable legal requirements.

(b) The legislative auditor shall, based on an assessment of risk and using professional standards to provide a statistically significant sample, no less than three times each year, test a representative sample of persons enrolled in a medical assistance program or MinnesotaCare to determine whether they are eligible to receive benefits under those programs. The legislative auditor shall report the results to the commissioner of human services and recommend corrective actions. The commissioner shall provide a response to the legislative auditor within 20 business days, including corrective actions to be taken to address any problems identified by the legislative auditor and anticipated completion dates. The legislative auditor shall monitor the commissioner's implementation of corrective actions and periodically report the results to the Legislative Audit Commission and the chairs and ranking minority members of the legislative committees with jurisdiction over health and human services policy and finance. The legislative auditor's reports to the commission and the chairs and ranking minority members must include recommendations for any legislative actions needed to ensure that medical assistance and MinnesotaCare benefits are provided only to eligible persons.

**Subd. 2b. Audits of managed care organizations.** (a) The legislative auditor shall audit each managed care organization that contracts with the commissioner of human services to provide health care services under sections [256B.69](#), [256B.692](#), and [256L.12](#). The legislative auditor shall design the audits to determine if a managed care organization used the public money in compliance with federal and state laws, rules, and in accordance with provisions in the managed care organization's contract with the commissioner of human services. The legislative auditor shall determine the schedule and scope of the audit work and may contract with vendors to assist with the audits. The managed care organization must cooperate with the legislative auditor and must provide the legislative auditor with all data, documents, and other information, regardless of classification, that the legislative auditor requests to conduct an audit. The legislative auditor shall periodically report audit results and recommendations to the Legislative Audit Commission and the chairs and ranking minority members of the legislative committees with jurisdiction over health and human services policy and finance.

(b) For purposes of this subdivision, a "managed care organization" means a demonstration provider as defined under section [256B.69, subdivision 2](#).

**Subd. 2c. Audits of the Department of Transportation.** The legislative auditor must audit, as resources permit, the programs and services administered by the Department of Transportation.

**Subd. 2d. Audits of the Department of Public Safety.** The legislative auditor must audit, as resources permit, the programs and services administered by the Department of Public Safety.

**Subd. 3. Audit contracts.** Notwithstanding any other law, a state department, board, commission, or other state agency shall not negotiate a contract with a public accountant for an audit, except a contract negotiated by the state auditor for an audit of a local government, unless the contract has been reviewed by the legislative auditor. The legislative auditor shall not participate in the selection of the public accountant but shall review and submit

written comments on the proposed contract within seven days of its receipt. Upon completion of the audit, the legislative auditor shall be given a copy of the final report.

**Subd. 4.** MS 2018 [Repealed, [1Sp2019 c 3 art 3 s 140](#)]

**History:** ([3276](#)) [1913 c 555 s 3](#); [1949 c 33 s 2](#); [1973 c 492 s 28](#); [1983 c 317 s 2](#); [1986 c 444](#); [1988 c 469 art 1 s 1](#); [1992 c 542 s 4](#); [2001 c 109 art 2 s 1](#); [2010 c 191 s 1](#); [1Sp2017 c 4 art 2 s 6](#); [1Sp2017 c 6 art 4 s 1,2](#); [1Sp2019 c 3 art 3 s 1,2](#)

**3.973** [Repealed, [1999 c 99 s 24](#)]

**3.9735 MS 2018** [Repealed, [1Sp2019 c 10 art 2 s 27](#)]

### **3.974 DISTRIBUTION OF WRITTEN REPORT.**

For each audit, evaluation, or other review completed, the legislative auditor shall provide a written report to the organization or individual audited, evaluated, or reviewed; the Legislative Reference Library; and the Legislative Audit Commission.

**History:** ([3286-10](#)) [1939 c 431 art 4 s 3](#); [1973 c 492 s 29](#); [1986 c 444](#); [1988 c 469 art 1 s 1](#); [1999 c 99 s 3](#)

### **3.9741 COST OF CERTAIN AUDITS.**

**Subdivision 1. Metropolitan Commission.** Upon the audit of the financial accounts and affairs of a commission under section [473.595](#), [473.604](#), or [473.703](#), the affected Metropolitan Commission is liable to the state for the total cost and expenses of the audit, including the salaries paid to the examiners while actually engaged in making the examination. The legislative auditor may bill the Metropolitan Commission either monthly or at the completion of the audit. All collections received for the audits must be deposited in the general fund.

**Subd. 2. Postsecondary Education Board.** The legislative auditor may enter into an interagency agreement with the Board of Trustees of the Minnesota State Colleges and Universities to conduct financial audits, in addition to audits conducted under section [3.972](#), [subdivision 2](#). All payments received for audits requested by the board shall be deposited in the special revenue fund and appropriated to the legislative auditor to pay audit expenses.

**Subd. 3. Legacy funds.** The outdoor heritage fund, the clean water fund, the parks and trails fund, and the arts and cultural heritage fund must each reimburse the general fund, in the manner prescribed in section [16A.127](#), for costs incurred by the legislative auditor in examining financial activities relating to each fund.

**Subd. 4. Minnesota Sports Facilities Authority.** Upon the audit of the financial accounts and affairs of the Minnesota Sports Facilities Authority, the authority is liable to the state for the total cost and expenses of the audit, including the salaries paid to the examiners while actually engaged in making the examination. The legislative auditor may bill the authority either monthly or at the completion of the audit. All collections received for the audits must be deposited in the general fund.

**Subd. 5. State data security; account, appropriation.** (a) The data security account is created in the special revenue fund.

(b) Subject to available funds appropriated under paragraph (a), the legislative auditor shall:

(1) review and audit the audit reports of subscribers and requesters submitted under section [168.327](#), [subdivision 6](#), including producing findings and opinions;

(2) in collaboration with the commissioner and affected subscribers and requesters, recommend corrective action plans to remediate any deficiencies identified under clause (1); and

(3) review and audit driver records subscription services and bulk data practices of the Department of Public Safety, including identifying any deficiencies and making recommendations to the commissioner.

(c) The legislative auditor shall submit any reports, findings, and recommendations under this subdivision to the legislative commission on data practices.

**History:** [1984 c 638 s 2](#); [1988 c 469 art 1 s 1](#); [1993 c 13 art 2 s 2](#); [1Sp1993 c 2 art 3 s 1](#); [1995 c 212 art 4 s 1](#); [1995 c 254 art 1 s 37](#); [2010 c 361 art 3 s 1](#); [1Sp2010 c 1 art 14 s 1](#); [2012 c 299 art 1 s 3](#); [2014 c 293 s 1](#)

### **3.975 DUTIES CONCERNING MISUSE OF PUBLIC MONEY OR OTHER RESOURCES.**

If a legislative auditor's examination discloses that a state official or employee has used money for a purpose other than the purpose for which the money was appropriated or discloses any other misuse of public money or other public resources, the legislative auditor shall file a report with the Legislative Audit Commission, the attorney general, and the appropriate county attorney. The attorney general shall seek recovery of money and other resources as the evidence may warrant. The county attorney shall cause criminal proceedings to be instituted as the evidence may warrant.

**History:** [\(3286-11\) 1939 c 431 art 4 s 4](#); [1973 c 492 s 30](#); [1986 c 444](#); [1988 c 469 art 1 s 1](#); [1999 c 99 s 4](#); [2009 c 101 art 2 s 5](#)

**3.976 MS 1978** [Renumbered [6.74](#)]

**3.977** [Renumbered [6.75](#)]

### **3.978 AUXILIARY POWERS.**

**Subdivision 1. Subpoena power.** In all matters relating to official duties, the legislative auditor has the powers possessed by courts of law to issue and have subpoenas served.

**Subd. 2. Inquiry and inspection power; duty to aid legislative auditor.** All public officials and their deputies and employees, and all corporations, firms, and individuals having business involving the receipt, disbursement, or custody of public funds shall at all times afford reasonable facilities for examinations by the legislative auditor, make returns and reports required by the legislative auditor, attend and answer under oath the legislative auditor's lawful inquiries, produce and exhibit all books, accounts, documents, data of any classification, and property that the legislative auditor may need to inspect, and in all things aid the legislative auditor in the performance of duties.

**Subd. 3. Penalties.** (a) If a person refuses or neglects to obey any lawful direction of the legislative auditor, a deputy or assistant, or withholds any information, book, record, paper or other document called for by the legislative auditor for the purpose of examination, after having been lawfully required by order or subpoena, upon application by the auditor, a judge of the district court in the county where the order or subpoena was made returnable shall compel obedience or punish disobedience as for contempt, as in the case of a similar order or subpoena issued by the court.

(b) A person who swears falsely concerning any matter stated under oath is guilty of a gross misdemeanor.

**History:** [1974 c 118 s 1](#); [1986 c 444](#); [1988 c 469 art 1 s 1](#); [2005 c 163 s 1](#)

### **3.979 DATA CLASSIFICATION AND DISCLOSURE.**

**Subdivision 1. Data practices.** The legislative auditor is subject to the Government Data Practices Act, chapter 13, and shall protect from unlawful disclosure data classified as not public. If data provided by the legislative auditor to the commission is disseminated by the commission or its members or agents in violation of section [13.05, subdivision 4](#), the commission is subject to liability under section [13.08](#), subdivisions 1 and 3.



**Subd. 2. Access to data by commission members.** Members of the commission have access to data that is collected or used by the legislative auditor and classified as not public or as private or confidential only as authorized by resolution of the commission. The commission may not authorize its members to have access to private or confidential data on individuals collected or used in connection with the collection of any tax.

**Subd. 3. Audit data.** (a) “Audit” as used in this subdivision means a financial audit, review, program evaluation, best practices review, or investigation. Data relating to an audit are not public or with respect to data on individuals are confidential until the final report of the audit has been released by the legislative auditor or the audit is no longer being actively pursued. Upon release of a final audit report by the legislative auditor, data relating to an audit are public except data otherwise classified as not public.

(b) Data related to an audit but not published in the audit report and that the legislative auditor reasonably believes will be used in litigation are not public and with respect to data on individuals are confidential until the litigation has been completed or is no longer being actively pursued.

(c) Data on individuals that could reasonably be used to determine the identity of an individual supplying data for an audit are private if the data supplied by the individual were needed for an audit and the individual would not have provided the data to the legislative auditor without an assurance that the individual’s identity would remain private, or the legislative auditor reasonably believes that the subject would not have provided the data.

(d) The definitions of terms provided in section [13.02](#) apply for purposes of this subdivision.

**Subd. 4. Review of data; data protection.** If, before releasing a report, the legislative auditor provides a person with data relating to the audit for the purpose of review and verification of the data, the person must protect the data from unlawful disclosure or be subject to the penalties and liabilities provided in sections [13.08](#) and [13.09](#).

**Subd. 5.** [Repealed, [2006 c 262 s 2](#)]

**History:** [1973 c 492 s 12](#); [1973 c 720 s 76](#) subd 2; [1975 c 204 s 90](#); [1980 c 484 s 1-3](#); [1981 c 311 s 39](#); [1982 c 545 s 24](#); [1983 c 317 s 1](#); [1985 c 248 s 70](#); [1986 c 444](#); [1988 c 469 art 1 s 1](#); [1989 c 351 s 1](#); [1991 c 345 art 1 s 38](#); [1993 c 4 s 5](#); [1994 c 632 art 3 s 15](#); [1997 c 184 s 1](#); [1999 c 99 s 23](#); [1Sp2001 c 10 art 2 s 11](#)