CHAPTER 15

Legislative Audit Council

**SECTION 2‑15‑10.** Creation and membership of council.

 There is created the Legislative Audit Council consisting of five members, one of whom must be a practicing certified public accountant or a licensed public accountant and one of whom must be an attorney. The council must be elected by the General Assembly in a joint session from the nominees presented by the nominating committee. The council also includes as ex officio members the following: the Chairmen of the Senate and House Judiciary Committees or a designee by either chairman from the membership of the respective committees and the Chairmen of the Senate Finance Committee and the House Ways and Means Committee or a designee by either chairman from the membership of the respective committees. The ex officio members, including their designees, are voting members on all matters except those pertaining to auditing functions and personnel matters. The council is directly responsible to the General Assembly and is independent of any other state agency, board, or department.

HISTORY: 1962 Code Section 30‑111; 1974 (58) 2608; 1975 (59) 178; 1990 Act No. 329, Section 1; 1995 Act No. 8, Section 1.

CROSS REFERENCES

Provision that committee members, rather than chairmen, may be elected to serve ex officio on boards and commissions, see Section 2‑1‑90.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k35.

States 35.

C.J.S. States Section 52.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. General Assembly Section 57, Legislative Audit Council.

**SECTION 2‑15‑20.** Nominating committee.

 The nominating committee must be composed of six members, three of whom must be appointed by the President of the South Carolina Senate and three of whom must be appointed by the Speaker of the South Carolina House of Representatives. The nominating committee shall present not more than three nominees for each vacancy. When a vacancy occurs, the director shall immediately notify those charged with appointing the nominating committee. If the General Assembly is in session at the time notice is given, a nominating committee must be appointed within fifteen days of the notification and the election must be held within forty‑five days of the notification and no later than sine die adjournment of the General Assembly. If the General Assembly is not in session and a vacancy exists in the non ex officio members of the council, the Speaker and President of the Senate, acting jointly, shall fill the vacancy until an election can be held.

HISTORY: 1962 Code Section 30‑112; 1974 (58) 2608; 1975 (59) 178; 1995 Act No. 8, Section 2.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k34.

States 34.

C.J.S. States Sections 55 to 58.

**SECTION 2‑15‑30.** Terms of office; prohibition of membership to members of General Assembly; chairman.

 The terms of office of the members of the Council shall be for six years and until their successors are appointed and qualify, except that of the initial members, one shall be elected for the term of two years, one for a term of four years and one for a term of six years. No person who is either a member of the General Assembly or has served in the General Assembly during the preceding two years shall be elected to the Council. Any member may succeed himself on the Council. The Council shall elect its own chairman.

HISTORY: 1962 Code Section 30‑113; 1974 (58) 2608; 1975 (59) 178.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k51.

States 51.

C.J.S. States Sections 61, 87, 92.

**SECTION 2‑15‑40.** Election, qualifications and duties of Director.

 The Council shall be in charge of a Director who shall be elected by a majority vote of the Council and he shall hold office for a term of four years and until his successor shall have been elected and qualifies. The Director shall be chosen solely on the grounds of fitness to perform the duties assigned to him and shall possess the following minimum qualifications: (a) a Baccalaureate Degree from an accredited college or university; (b) at least five years of experience in public, industrial or governmental accounting with at least three years in a responsible managerial capacity. No member of the General Assembly nor anyone who shall have been a member for two years previously shall be appointed as Director. The Director shall act as Secretary for the Council and he shall have authority to employ, with the approval of the Council, such technical, clerical, and stenographic assistance as may be necessary to carry out the duties of the office; provided, however, that at least one staff member shall be qualified to audit or to supervise the audit of State programs and activities in order to determine if funds have been used in a faithful, effective, economical and efficient manner.

HISTORY: 1962 Code Section 30‑114; 1974 (58) 2608; 1975 (59) 178.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k46.

States 46.

C.J.S. States Sections 61, 80, 84, 102.

**SECTION 2‑15‑50.** “State agencies”, “audit” defined.

 For the purpose of this chapter “state agencies” means all officers, departments, boards, commissions, institutions, universities, colleges, bodies politic and corporate of the State and any other person or any other administrative unit of state government or corporate outgrowth of state government, expending or encumbering state funds by virtue of an appropriation from the General Assembly, or handling money on behalf of the State, or holding any trust funds from any source derived, but does not mean or include counties.

 For the purposes of this chapter, “audit” means a full‑scope examination of and investigation into all state agency matters necessary to make a determination of:

 (a)(1) whether the entity is acquiring, protecting, and using its resources, such as personnel, property, and space, economically and efficiently;

 (2) the causes of inefficiencies or uneconomical practices; and

 (3) whether the entity has complied with laws and regulations concerning matters of economy and efficiency; and

 (b)(1) the extent to which the desired results or benefits established by the General Assembly or other authorizing body are achieved;

 (2) the effectiveness of organizations, programs, activities, or functions and whether these organizations, programs, activities, or functions should be continued, revised, or eliminated; and

 (3) whether the entity has complied with laws and regulations applicable to the program.

HISTORY: 1975 (59) 178; 1985 Act No. 201, Part II, Section 16A; 1990 Act No. 329, Section 2; 2014 Act No. 121 (S.22), Pt IX, Section 26.B, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 26.B, rewrote subsection (b)(2).

Attorney General’s Opinions

The Legislative Audit Council does not possess the authority to audit the Greenville Health System Office of Philanthropy and all other related departments or not‑for‑profit organizations. S.C. Op.Atty.Gen. (April 25, 2016) 2016 WL 2607248.

(1) In defining which State agencies, departments and institutions must comply with the Fiscal Accountability Act, Section 2‑15‑50 may be considered in “pari materia” with Act 561 or 1976, subject only to the exemption of those agencies made up wholly of members of the General Assembly and therefore within the legislative department, and those agencies within the Office of the Governor, not excluding the Office of Administration; (2) Any agency composed of members of the legislature and members at large appointed by the Governor and which is funded by State appropriation, would be required to comply with the provisions of Act 561. 1976‑77 Op Atty Gen, No. 77‑210, p 162.

In the absence of any clear legislative expression authorizing the Legislative Audit Council to audit a local political subdivision, such as a school district, it is doubtful that the Council possesses such authority pursuant to the present provisions of Sections 2‑15‑60(b) and 2‑15‑50. 1986 Op Atty Gen, No. 86‑14, p 60.

The Legislative Audit Council possesses the statutory authority to conduct an audit of the South Carolina Public Service Authority. 1994 Op Atty Gen, No. 94‑19, p. 46.

**SECTION 2‑15‑60.** Duties of council.

 It is the duty of the council:

 (a) To respond to any request concerning a fiscal matter or information related to the purposes set forth in Section 2‑15‑50 which may be referred to it by the General Assembly or any of its members or committees.

 (b) To conduct audits, if authorized by the council, upon request of the General Assembly or either of its respective bodies, a standing committee, the Speaker of the House, the President Pro Tempore of the Senate, or not less than five members of the General Assembly, and to submit a report containing its findings and recommendations to the requesting entity or persons and to any member of the General Assembly who may request a copy.

 (c) To assist the General Assembly in the performance of its official functions by providing its members and committees with impartial and accurate information and reports concerning the fiscal problems presented to them as members of the General Assembly.

 (d) To establish a system of post audits for all fiscal matters and financial transactions for all state agencies of the state government.

HISTORY: 1962 Code Section 30‑115; 1974 (58) 2608; 1975 (59) 178; 1990 Act No. 329, Section 3.

CROSS REFERENCES

Exception of report under this section from requirement that records be confidential, see Section 2‑15‑120.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k35; 360k73.

States 35, 73.

C.J.S. States Sections 52, 130 to 136, 140.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. General Assembly Section 57, Legislative Audit Council.

Attorney General’s Opinions

Records of Legislative Audit Council relative to “sunset reviews” of various agencies or boards would be available for disclosure once final review and evaluation report of particular agency or board is published, unless such information is accorded confidentiality by specific statute. To extent this opinion is inconsistent with prior opinion dated June 24, 1981, this opinion is deemed controlling. 1990 Op Atty Gen No. 90‑57.

In the absence of any clear legislative expression authorizing the Legislative Audit Council to audit a local political subdivision, such as a school district, it is doubtful that the Council possesses such authority pursuant to the present provisions of Sections 2‑15‑60(b) and 2‑15‑50. 1986 Op Atty Gen, No. 86‑14, p 60.

Personnel Division may disclose salary of State employees to (1) Comptroller General, (2) State Auditor, (3) Budget and Control Board, (4) Legislators, (5) State Reorganization Commission, and (b) Legislative Audit Council. 1978 Op Atty Gen, No. 78‑199, p 223.

**SECTION 2‑15‑61.** Access by Council to agency records and facilities; exception.

 For the purposes of carrying out its audit duties under this chapter, the Legislative Audit Council shall have access to the records and facilities of every state agency during that agency’s operating hours with the exception of reports and returns of the South Carolina Department of Revenue as provided in Sections 12‑7‑1680 and 12‑35‑1530.

HISTORY: 1985 Act No. 201, Part II, Section 16B; 1993 Act No. 181, Section 26.

LIBRARY REFERENCES

Westlaw Key Number Search: 326k33.

Records 33.

C.J.S. Records Section 63.

**SECTION 2‑15‑62.** Applicability of provisions relative to confidentiality of records.

 In the performance of their audit duties, Legislative Audit Council staff members are subject to the statutory provisions and penalties regarding confidentiality of records of the agency under review.

HISTORY: 1985 Act No. 201, Part II, Section 16C.

LIBRARY REFERENCES

Westlaw Key Number Search: 326k31.

Records 31.

C.J.S. Criminal Law Sections 449 to 450.

C.J.S. Records Sections 74 to 92.

Attorney General’s Opinions

Whether individuals should be requested to sign affidavit of confidentiality, with regard to file compiled by Legislative Audit Council in conducting sunset review, would be matter of policy for Audit Council to determine. 1991 Op Atty Gen, No. 91‑4, p 21.

Records of Legislative Audit Council relative to “sunset reviews” of various agencies or boards would be available for disclosure once final review and evaluation report of particular agency or board is published, unless such information is accorded confidentiality by specific statute. To extent this opinion is inconsistent with prior opinion dated June 24, 1981, this opinion is deemed controlling. 1990 Op Atty Gen No. 90‑57.

**SECTION 2‑15‑63.** Management performance audit of Lottery Commission.

 (A) Beginning in December 2004 and every three years after that, the Legislative Audit Council shall conduct a management performance audit of the South Carolina Lottery Commission. The cost of this audit is an operating expense of the commission.

 (B) Nothing in this section limits, abridges, or otherwise affects the provisions of Section 2‑15‑60.

 (C) The Legislative Audit Council may contract with an independent firm experienced in security procedures including, but not limited to, computer security and systems security, to periodically conduct a comprehensive study and evaluation of all aspects of security in the operation of the commission and the lottery. This firm mUst not have a financial interest in a lottery vendor with whom the commission is under contract. The cost of this evaluation is an operating expense of the commission. The commission shall pay directly to the Legislative Audit Council the cost of the evaluation.

HISTORY: 2001 Act No. 59, Section 6.

LIBRARY REFERENCES

Westlaw Key Number Search: 247k1.

Lotteries 1.

C.J.S. Lotteries Section 8.

**SECTION 2‑15‑64.** Department of Social Services audits.

 Beginning December 31, 2013, and every three years thereafter, the Legislative Audit Council shall conduct a management performance audit of a program of the South Carolina Department of Social Services. The program to be reviewed will be determined after consultation with the House of Representatives and the Senate. The Legislative Audit Council is authorized to charge the Department of Social Services for federal funds, if available, for the costs associated with this audit and shall provide certification to the Department of Social Services of certified public expenditures that are eligible for matching federal funds. The Department of Social Services shall remit the federal funds to the Legislative Audit Council as reimbursement for the costs of the audit.

HISTORY: 2014 Act No. 281 (H.3102), Section 3, eff June 10, 2014.

**SECTION 2‑15‑65.** Auditing for Title XX funds.

 Notwithstanding any other provision of law, in order to further comply with federal requirements and increase the oversight abilities of the General Assembly, the Legislative Audit Council shall ensure that an appropriate amount is budgeted for audit purposes in all Title XX federal programs and shall designate and assign audit responsibility in accordance with state and federal laws and regulations and the intent of the General Assembly.

HISTORY: 1977 Act No. 219, Part II, Section 30.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k73.

States 73.

C.J.S. States Sections 130 to 136, 140.

**SECTION 2‑15‑70.** Use of facilities of State institutions of higher learning and other agencies.

 The facilities of the State institutions of higher learning and any other tax supported agencies shall be available for use by the Council in carrying out its functions.

HISTORY: 1962 Code Section 30‑116; 1974 (58) 2608; 1975 (59) 178.

CROSS REFERENCES

Libraries, generally, see Title 60.

LIBRARY REFERENCES

Westlaw Key Number Searches: 81k5; 360k67.

Colleges and Universities 5.

States 67.

C.J.S. Colleges and Universities Sections 8, 41.

C.J.S. States Sections 121, 136 to 138, 140.

**SECTION 2‑15‑80.** Employees shall not urge or oppose legislation or give financial advice.

 Neither the Director nor any other employee of the Council shall urge or oppose any legislation or give financial advice to any person except members of the legislature.

HISTORY: 1962 Code Section 30‑117; 1974 (58) 2608; 1975 (59) 178.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k73.

States 73.

C.J.S. States Sections 130 to 136, 140.

**SECTION 2‑15‑90.** Council shall not prepare legislation; relations with Legislative Council.

 It shall not be a function of the Council staff to prepare legislation and all suggested legislation resulting from staff studies shall be channeled through the Legislative Council which shall cooperate with the staff.

HISTORY: 1962 Code Section 30‑118; 1974 (58) 2608; 1975 (59) 178.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k35.

States 35.

C.J.S. States Section 52.

**SECTION 2‑15‑110.** Expenses of members of nominating committee and Council.

 The members of the nominating committee and the members of the Legislative Audit Council shall be entitled to per diem, mileage and subsistence as provided by law for members of boards, committees and commissions.

HISTORY: 1975 (59) 178.

**SECTION 2‑15‑120.** Confidentiality of records; penalty for violations.

 All records and audit working papers of the Legislative Audit Council with the exception of its final audit reports provided for by Section 2‑15‑60 are confidential and not subject to public disclosure. The court in determining the extent to which any disclosure of all or any part of a council record is necessary shall impose appropriate safeguards against unauthorized disclosure.

 As used in this section, “records” includes, but is not limited to books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the Legislative Audit Council.

 Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, may be fined not more than one thousand dollars or imprisoned not more than one year. If the person convicted is an officer or employee of the State, he must be dismissed from office or employment and is ineligible to hold any public office in this State for a period of five years after the conviction.

HISTORY: 1981 Act No. 29; 1998 Act No. 419, Part II, Section 35C; 2002 Act No. 244, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 326k31.

Records 31.

C.J.S. Criminal Law Sections 449 to 450.

C.J.S. Records Sections 74 to 92.

Attorney General’s Opinions

Prior to release of final audit report, in connection with file compiled by Legislative Audit Council in conducting sunset review, any evidence of criminal activity could be reported to appropriate law enforcement agency without necessarily disclosing record or document which revealed alleged criminal activity. Once sunset report has been published, Audit Council could provide records or documents with its reports of alleged criminal activities to law enforcement agencies or officials. 1991 Op Atty Gen, No. 91‑4, p 21.

There is no distinction between permitting legislator to view file and make notes and his being provided copies of documents from file compiled by Legislative Audit Council relative to sunset review once final review is released, unless documents are accorded confidentiality by specific statute. 1991 Op Atty Gen, No. 91‑4, p 21.

Whether distinction should be made in way in which Audit Council would respond to (1) legislative committee which is reviewing operation of Audit Council, (2) individual legislator who is not connected with Audit Council review, (3) legislator who requested audit, or (4) legislative staff, would depend on facts and circumstances of each situation before permitting or denying disclosure of information in files of Audit Council. 1991 Op Atty Gen, No. 91‑4, p 21.

Whether individuals should be requested to sign affidavit of confidentiality, with regard to file compiled by Legislative Audit Council in conducting sunset review, would be matter of policy for Audit Council to determine. 1991 Op Atty Gen, No. 91‑4, p 21.

Impact of Section 1‑22‑60 of Compliance Review Act on Section 2‑15‑120, as to confidentiality of various records, is addressed in Op. Atty Gen, dated September 26, 1990. 1991 Op Atty Gen, No. 91‑4, p 21.

Only court may compel production or disclosure of records ordinarily considered confidential under Section 1‑22‑60. In doing so, court would most certainly attempt to protect confidentiality insofar as possible, while simultaneously balancing need for disclosure. 1991 Op Atty Gen, No. 91‑4, p 21.

Disclosing information within agency or among various departments of political subdivision or disclosing information as result of illegal proceedings would probably not constitute “public disclosure.” Rather disclosure of information to one or more members of public is necessary to establish fact of “public disclosure.” 1991 Op Atty Gen, No. 91‑4, p 21.

If Audit Council suspects or has evidence that criminal or illegal acts are occurring or have occurred, such should be reported to appropriate law enforcement officials, who could review matters and make necessary determinations. 1991 Op Atty Gen, No. 91‑4, p 21.

Where legal counsel to Audit Council have been employed in dual capacity as both legal counsel and auditor, there would be no distinction in work done as auditor and work performed as attorney under either Freedom of Information Act or Rules of Professional Conduct governing confidentiality of attorney’s work product. 1991 Op Atty Gen, No. 91‑4, p 21.

Attorney General’s opinion dated June 24, 1981, remains opinion of Attorney General’s Office except as modified by instant opinion and those issued on September 21 and 26, 1990. 1991 Op Atty Gen, No. 91‑4, p 21.

Records of Legislative Audit Council relative to “sunset reviews” of various agencies or boards would be available for disclosure once final review and evaluation report of particular agency or board is published, unless such information is accorded confidentiality by specific statute. To extent this opinion is inconsistent with prior opinion dated June 24, 1981, this opinion is deemed controlling. 1990 Op Atty Gen No. 90‑57.