

Paul A. Cutler proposes the following substitute bill:

Government Records Management Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

House Sponsor: Jefferson Moss

LONG TITLE

General Description:

This bill creates the Government Records Office (the office) within the Division of Archives and Records Service (the division), and replaces the State Records Committee (the committee) with the director of the office, who is an attorney with knowledge and experience relating to government records law and makes other changes relating to government records.

Highlighted Provisions:

This bill:

- defines terms;
- creates the office within the division and describes the functions of the office;
- requires the governor to appoint the director of the office, in consultation with the executive director of the department, and with the advice and consent of the Senate;
- describes the term of office, qualifications, and duties of the director;
- directs the Division of Human Resource Management to conduct a performance survey and evaluation of the director on a specified schedule;
- repeals the committee;
- provides that the director will replace the committee in fulfilling the duties currently assigned to the committee, including the duty to decide appeals under the Government Records Access and Management Act;
- makes the government records ombudsman an employee of the office;
- grants rulemaking authority to the director of the office;
- provides for the transition from the committee to the director of the office;
- provides that an individual in an executive branch management position is subject to the record amendment or retention policy created by the governor;
- makes technical and conforming changes; and
- includes a coordination clause to resolves conflicts between this bill and S.B. 163,

Government Records Amendments, to allow the changes in S.B. 163 to work within the provisions of this bill that replace the State Records Committee with the director of the Government Records Office.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides coordination clauses.

Utah Code Sections Affected:

AMENDS:

20A-11-1205, as last amended by Laws of Utah 2020, Chapter 22
53B-16-303, as last amended by Laws of Utah 2020, Chapter 365
63A-12-101, as last amended by Laws of Utah 2023, Chapter 173
63A-12-106, as last amended by Laws of Utah 2019, Chapter 254
63G-2-103, as last amended by Laws of Utah 2024, Chapters 18, 465, 509, and 522
63G-2-201, as last amended by Laws of Utah 2023, Chapters 173, 516
63G-2-209, as enacted by Laws of Utah 2023, Chapter 516
63G-2-309, as last amended by Laws of Utah 2023, Chapter 516
63G-2-400.5, as last amended by Laws of Utah 2019, Chapters 254, 334
63G-2-401, as last amended by Laws of Utah 2024, Chapter 407
63G-2-402, as last amended by Laws of Utah 2024, Chapter 407
63G-2-403, as last amended by Laws of Utah 2024, Chapter 407
63G-2-404, as last amended by Laws of Utah 2024, Chapter 407
63G-2-701, as last amended by Laws of Utah 2019, Chapter 254
63G-2-702, as last amended by Laws of Utah 2023, Chapter 516
63G-2-703, as last amended by Laws of Utah 2023, Chapters 291, 516
63G-2-704, as enacted by Laws of Utah 2023, Chapter 516
63G-2-801, as last amended by Laws of Utah 2019, Chapter 254
63H-1-202, as last amended by Laws of Utah 2024, Chapter 514
67-3-1, as last amended by Laws of Utah 2024, Chapters 3, 158
77-18-103, as last amended by Laws of Utah 2024, Chapters 187, 245 and 434
77-27-5, as last amended by Laws of Utah 2024, Chapters 145, 187 and 208

ENACTS:

63A-12-201, Utah Code Annotated 1953
63A-12-202, Utah Code Annotated 1953

63 **63A-12-203**, Utah Code Annotated 1953

64 **63A-12-205**, Utah Code Annotated 1953

65 RENUMBERS AND AMENDS:

66 **63A-12-204**, (Renumbered from 63A-12-111, as last amended by Laws of Utah 2024,
67 Chapter 407)

68 REPEALS:

69 **63G-2-101**, as renumbered and amended by Laws of Utah 2008, Chapter 382

70 **63G-2-501**, as last amended by Laws of Utah 2024, Chapter 529

71 **63G-2-502**, as last amended by Laws of Utah 2019, Chapter 254

72 **Utah Code Sections affected by Coordination Clause:**

73 **63A-12-203**, Utah Code Annotated 1953

74 **63G-2-400.5**, as last amended by Laws of Utah 2019, Chapters 254, 334

75 **63G-2-403**, as last amended by Laws of Utah 2024, Chapter 407

76 **63G-2-701**, as last amended by Laws of Utah 2019, Chapter 254

77

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

79 Section 1. Section **20A-11-1205** is amended to read:

80 **20A-11-1205 . Use of public email for a political purpose.**

81 (1) Except as provided in Subsection (5), a person may not send an email using the email of
82 a public entity:

83 (a) for a political purpose;

84 (b) to advocate for or against a proposed initiative, initiative, proposed referendum,
85 referendum, a proposed bond, a bond, or any ballot proposition; or

86 (c) to solicit a campaign contribution.

87 (2)(a) The lieutenant governor shall, after giving the person and the complainant notice
88 and an opportunity to be heard, impose a civil fine against a person who violates
89 Subsection (1) as follows:

90 (i) up to \$250 for a first violation; and

91 (ii) except as provided in Subsection (3), for each subsequent violation committed
92 after the lieutenant governor imposes a fine against the person for a first violation,
93 \$1,000 multiplied by the number of violations committed by the person.

94 (b) A person may, within 30 days after the day on which the lieutenant governor
95 imposes a fine against the person under this Subsection (2), appeal the fine to a
96 district court.

- (3) The lieutenant governor shall consider a violation of this section as a first violation if the violation is committed more than seven years after the day on which the person last committed a violation of this section.
- (4) For purposes of this section, one violation means one act of sending an email, regardless of the number of recipients of the email.
- (5) A person does not violate this section if:
- (a) the lieutenant governor finds that the email described in Subsection (1) was inadvertently sent by the person using the email of a public entity;
 - (b) the person is directly providing information solely to another person or a group of people in response to a question asked by the other person or group of people;
 - (c) the information the person emails is an argument or rebuttal argument prepared under Section 20A-7-401.5 or 20A-7-402, and the email includes each opposing argument and rebuttal argument that:
 - (i) relates to the same proposed initiative, initiative, proposed referendum, or referendum; and
 - (ii) complies with the requirements of Section 20A-7-401.5 or 20A-7-402; or
 - (d) the person is engaging in:
 - (i) an internal communication solely within the public entity;
 - (ii) a communication solely with another public entity;
 - (iii) a communication solely with legal counsel;
 - (iv) a communication solely with the sponsors of an initiative or referendum;
 - (v) a communication solely with a land developer for a project permitted by a local land use law that is challenged by a proposed referendum or a referendum; or
 - (vi) a communication solely with a person involved in a business transaction directly relating to a project described in Subsection (5)(d)(v).
- (6) A violation of this section does not invalidate an otherwise valid election.
- (7) An email sent in violation of Subsection (1), as determined by the records officer, constitutes a record, as defined in Section 63G-2-103, that is subject to the provisions of Title 63G, Chapter 2, Government Records Access and Management Act, notwithstanding any applicability of Subsection [63G-2-103(25)(b)(i)] 63G-2-103(26)(b)(i).
- Section 2. Section **53B-16-303** is amended to read:
- 53B-16-303 . Access to restricted records.**
- (1) Notwithstanding any other provision of Title 63G, Chapter 2, Government Records

Access and Management Act, access to records restricted by this part shall only be permitted upon:

- [~~(1)~~] (a) written consent of the public institution of higher education originating, receiving, or maintaining [~~such~~] the records; or
- [~~(2)~~] (b) a finding by the [~~State Records Committee~~] director of the Government Records Office or a court that the record has not been properly classified as restricted under Section 63G-2-302, provided that the review of a restricted classification of a record shall not include considerations of weighing public and private interests regarding access to a properly classified record as contained in Subsection 63G-2-403(11)(b) or 63G-2-404(7) or Section 63G-2-309.

- (2) [~~Nothing in this~~] Subsection (2) [~~shall be construed to~~] does not limit the authority of the board to reclassify and disclose a record of a public institution of higher education.

Section 3. Section **63A-12-101** is amended to read:

63A-12-101 . Division of Archives and Records Service created -- Duties.

- (1) There is created the Division of Archives and Records Service within the department.
- (2) The state archives shall:
- (a) administer the state's archives and records management programs, including storage of records, central reformatting programs, and quality control;
 - (b) apply fair, efficient, and economical management methods to the collection, creation, use, maintenance, retention, preservation, disclosure, and disposal of records and documents;
 - (c) establish standards, procedures, and techniques for the effective management and physical care of records;
 - (d) conduct surveys of office operations and recommend improvements in current records management practices, including the use of space, equipment, automation, and supplies used in creating, maintaining, storing, and servicing records;
 - (e) establish standards for the preparation of schedules providing for the retention of records of continuing value and for the prompt and orderly disposal of state records no longer possessing sufficient administrative, historical, legal, or fiscal value to warrant further retention;
 - (f) establish, maintain, and operate centralized reformatting lab facilities and quality control for the state;
 - (g) provide staff and support services to the Records Management Committee created in Section 63A-12-112 and the [~~State Records Committee created in Section 63G-2-501~~]

Government Records Office, created in Section 63A-12-202;

(h) develop training programs to assist records officers and other interested officers and employees of governmental entities to administer this chapter and Title 63G, Chapter 2, Government Records Access and Management Act;

(i) provide access to public records deposited in the archives;

(j) administer and maintain the Utah Public Notice Website established under Section 63A-16-601;

(k) provide assistance to any governmental entity in administering this chapter and Title 63G, Chapter 2, Government Records Access and Management Act;

(l) prepare forms for use by all governmental entities for a person requesting access to a record; and

(m) if the department operates the Division of Archives and Records Service as an internal service fund agency in accordance with Section 63A-1-109.5, submit to the Rate Committee established in Section 63A-1-114:

(i) the proposed rate schedule as required by Section 63A-1-114; and

(ii) other information or analysis requested by the Rate Committee.

(3) The state archives may:

(a) establish a report and directives management program;

(b) establish a forms management program; and

(c) in accordance with Section 63A-12-101, require that an individual undergo a background check if the individual:

(i) applies to be, or currently is, an employee or volunteer of the division; and

(ii) will have direct access to a vulnerable record in the capacity described in Subsection (3)(c)(i).

(4) The executive director may direct the state archives to administer other functions or services consistent with this chapter and Title 63G, Chapter 2, Government Records Access and Management Act.

Section 4. Section **63A-12-106** is amended to read:

63A-12-106 . Certified and microphotographed copies.

(1)(a) Upon demand, the state archives shall furnish certified copies of a record in the state archives's exclusive custody that is classified public or that is otherwise determined to be public under this chapter by the originating governmental entity, the [~~State Records Committee created in Section 63G-2-501~~] director of the Government Records Office, created in Section 63A-12-202, or a court of law.

(b) When certified by the state archivist under the seal of the state archives, a copy has the same legal force and effect as if certified by the originating governmental entity.

(2) The state archives may microphotograph records when the state archives determines that microphotography is an efficient and economical way to care, maintain, and preserve the record. A transcript, exemplification, or certified copy of a microphotograph has the same legal force and effect as the original. Upon review and approval of the microphotographed film by the state archivist, the source documents may be destroyed.

(3) The state archives may allow another governmental entity to microphotograph records in accordance with standards set by the state archives.

Section 5. Section **63A-12-201** is enacted to read:

Part 2. Government Records Office

63A-12-201 . Definitions.

As used in this part:

(1) "Director" means the director of the office, appointed under Subsection 63A-12-202(2).

(2) "Office" means the Government Records Office, created in Subsection 63A-12-202(1).

(3) "Records appeal process" means the process described in Title 63G, Chapter 2, Part 4, Appeals.

Section 6. Section **63A-12-202** is enacted to read:

63A-12-202 . Government Records Office -- Director -- Annual report.

(1) There is created within the division the Government Records Office.

(2) The governor shall appoint the director of the office:

(a) in consultation with the executive director; and

(b) with the advice and consent of the Senate.

(3) The director shall be:

(a) an attorney in good standing, authorized to practice law in Utah;

(b) knowledgeable regarding state law and practices relating to records management, including the provisions of Title 63G, Chapter 2, Government Records Access and Management Act;

(c) committed to:

(i) ensuring that records, and information in records, properly classified as private, protected, or controlled are disclosed only to the extent expressly provided by law;

(ii) protecting the privacy of persons whose information is in the custody of a government entity; and

(iii) the disclosure of records, and information contained in records, to the extent required by law; and

(d) capable of adjudicating appeals relating to the disclosure or nondisclosure of records in a manner that is impartial, responsible, and strictly in accordance with the requirements of law.

(4)(a) An appointment described in Subsection (2) is for a four-year term.

(b) The governor may, in accordance with Subsection (2), reappoint the same individual to consecutive terms as the director.

(c) The governor may remove the director, only for cause, before the end of a four-year term.

(d) Appointment of a director or an interim director is governed by the provisions of Section 67-1-1.5, relating to an executive branch management position.

(5) The Office of the Attorney General shall provide counsel to the office.

(6) The office shall, on an annual basis before October 1, electronically transmit a written report to the Government Operations Interim Committee on the work performed by the office during the previous year, that includes:

(a) metrics on the standardization and efficiency of processing appeals; and

(b) the effective implementation of the records ombudsman's role.

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

Section 7. Section **63A-12-203** is enacted to read:

63A-12-203 . Duties of director and office -- Reassignment of classification or designation -- Rulemaking authority -- Transition from State Records Committee.

(1) The director shall:

(a) supervise and manage the office;

(b) appoint and supervise a government records ombudsman to fulfill the duties described in Section 63A-12-204;

(c) administer the records appeal process;

(d) hear appeals regarding disputed fees under Section 63G-2-203;

(e) hear and decide appeals from determinations of access under Section 63G-2-403; and

(f) determine disputes submitted by the state auditor under Subsection 67-3-1(17)(d).

(2) The director may:

(a) employ staff to support the work of the office;

(b) by order, after notice and hearing, reassign classification or designation for any record series by a governmental entity if the governmental entity's classification or

designation is inconsistent with Title 63G, Chapter 2, Government Records Access and Management Act; and

(c) designate another individual to hear and decide appeals for a specific case if the director has a conflict of interest in relation to that case.

(3) The office shall be a resource to citizens and government entities in relation to government records, including:

(a) ensuring lawful access to records;

(b) ensuring the lawful restriction of access to records;

(c) classification of records;

(d) retention of records; and

(e) resolving records disputes informally, via informal mediation, or via the records appeal process.

(4)(a) An affected governmental entity or any other interested person may appeal the reassignment of a record under Subsection (2)(b) to a district court within 30 days after the day on which the director makes the reassignment.

(b) The district court shall hear an appeal described in Subsection (4)(a) de novo.

(5) The director shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to govern the procedures and proceedings for appeals made to the director as described in this part.

(6) The director shall, to the extent practicable and until the rules described in Subsection (5) are in effect, utilize the rules made by the former State Records Committee before January 1, 2025, with the director acting in place of the former State Records Committee.

(7) Any case or other matter that was, before appointment of the first director, pending before the former State Records Committee, is transferred to the director for resolution upon the director's appointment, to be resolved as soon as reasonably possible.

Section 8. Section **63A-12-204**, which is renumbered from Section 63A-12-111 is renumbered and amended to read:

[63A-12-111] 63A-12-204 . Government records ombudsman.

~~[(1)(a) The director of the division shall appoint a government records ombudsman.]~~

~~[(b) The government records ombudsman may not be a member of the State Records Committee created in Section 63G-2-501.]~~

~~[(2)] (1)(a) The government records ombudsman, appointed under Section 63A-12-202, shall:~~

~~(i) be familiar with the provisions of Title 63G, Chapter 2, Government Records~~

301 Access and Management Act;

302 (ii) serve as a resource for a person who is making or responding to a records request

303 or filing an appeal relating to a records request; and

304 (iii) upon a request from a requester or responder, and with the consent of both the

305 requester and responder, mediate a dispute between a requester and responder,

306 including a dispute between a requester and a governmental entity regarding the

307 governmental entity's access denial, as defined in Section 63G-2-400.5~~[-and]~~ .

308 ~~[(iv) on an annual basis, electronically transmit a written report to the Government~~

309 ~~Operations Interim Committee on the work performed by the government records~~

310 ~~ombudsman during the previous year.]~~

311 (b)(i) Before the conclusion of a mediation under Subsection ~~[(2)(a)(iii)]~~ (1)(a)(iii), a

312 requester or responder may withdraw consent for the mediation.

313 (ii) If a requester or responder withdraws consent under Subsection ~~[(2)(b)(i)]~~ (1)(b)(i),

314 the government records ombudsman shall~~[certify, as provided in Subsection~~

315 ~~(4)(a)(ii)]~~, in accordance with Subsection (3)(a)(ii), certify that the mediation was

316 not concluded because of a lack of the required consent.

317 ~~[(3)]~~ (2) The government records ombudsman may not testify, or be compelled to testify, [~~before the State Records Committee created in Section 63G-2-501, another]~~ regarding a

318 matter for which the government records ombudsman provides services under this

319 section:

320

321 (a) in an appeals proceeding described in Title 63G, Chapter 2, Part 4, Appeals; or

322 (b) before an administrative body[-] or a court~~[regarding a matter that the government~~

323 ~~records ombudsman provided services in relation to under this section].~~

324 ~~[(4)]~~ (3) Upon the conclusion of a mediation ~~[under Subsection (2)(a)(iii)]~~ described in

325 Subsection (1)(a)(iii), or upon the government records ombudsman's determination that

326 the required consent for the mediation is lacking, the government records ombudsman

327 shall:

328 (a) certify in writing that the mediation:

329 (i) is concluded; or

330 (ii) did not take place or was not concluded because of a lack of the required consent;

331 and

332 (b) provide a copy of the written certification to the requester and the responder.

333 Section 9. Section **63A-12-205** is enacted to read:

334 **63A-12-205 . Independent performance survey and evaluation.**

- (1)(a) Beginning in 2027 and every two years thereafter, the Division of Human Resource Management shall conduct a survey to collect feedback regarding the director's job performance.
- (b) The Division of Human Resource Management shall include as survey respondents a sample of each of the following groups:
- (i) individuals who have appeared before the director;
 - (ii) staff who have worked with the director; and
 - (iii) any other class of respondents the Division of Human Resource Management determines helpful.
- (c)(i) A survey response is anonymous, including any comment included with a survey response.
- (ii) If the Division of Human Resource Management provides any survey information to the director, the division shall provide the information in a manner that protects the survey respondent's confidentiality.
- (2) In a survey under this section, the Division of Human Resource Management:
- (a) shall include questions relating to whether the director's behavior furthers the elements of procedural fairness, including neutrality, careful deliberation, respectful treatment of parties, and providing parties the opportunity to be heard; and
 - (b) may include questions concerning the director's legal ability, temperament and integrity, and administrative performance.
- (3)(a) The Division of Human Resource Management may allow survey respondents to indicate responses:
- (i) on a numerical scale from one to five; or
 - (ii) in the affirmative or negative, with an option to indicate the respondent's inability to respond in the affirmative or negative.
- (b) To supplement a response to a survey question, the Division of Human Resource Management may allow a respondent to provide written comments.
- (4)(a) Each year in which the Division of Human Resource Management completes a survey under this section, the Division of Human Resource Management shall prepare an evaluation of the director's job performance that includes:
- (i) the results of the most recent survey conducted in accordance with this section; and
 - (ii) any other information the Division of Human Resource Management considers relevant to evaluating the director's performance.
- (b)(i) The Division of Human Resource Management shall provide a copy of the

369 director's performance evaluation to the governor.

370 (ii) Each year in which the Division of Human Resource Management completes a
371 survey and evaluation under this section, the governor or the governor's designee
372 shall report to the Government Operations Interim Committee on the director's
373 performance.

374 Section 10. Section **63G-2-103** is amended to read:

375 **63G-2-103 . Definitions.**

376 As used in this chapter:

377 (1) "Audit" means:

378 (a) a systematic examination of financial, management, program, and related records for
379 the purpose of determining the fair presentation of financial statements, adequacy of
380 internal controls, or compliance with laws and regulations; or

381 (b) a systematic examination of program procedures and operations for the purpose of
382 determining their effectiveness, economy, efficiency, and compliance with statutes
383 and regulations.

384 (2) "Chronological logs" mean the regular and customary summary records of law
385 enforcement agencies and other public safety agencies that show:

386 (a) the time and general nature of police, fire, and paramedic calls made to the agency;
387 and

388 (b) any arrests or jail bookings made by the agency.

389 (3) "Classification," "classify," and their derivative forms mean determining whether a
390 record series, record, or information within a record is public, private, controlled,
391 protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

392 (4)(a) "Computer program" means:

393 (i) a series of instructions or statements that permit the functioning of a computer
394 system in a manner designed to provide storage, retrieval, and manipulation of
395 data from the computer system; and

396 (ii) any associated documentation and source material that explain how to operate the
397 computer program.

398 (b) "Computer program" does not mean:

399 (i) the original data, including numbers, text, voice, graphics, and images;

400 (ii) analysis, compilation, and other manipulated forms of the original data produced
401 by use of the program; or

402 (iii) the mathematical or statistical formulas, excluding the underlying mathematical

403 algorithms contained in the program, that would be used if the manipulated forms
404 of the original data were to be produced manually.

405 (5)(a) "Contractor" means:

406 (i) any person who contracts with a governmental entity to provide goods or services
407 directly to a governmental entity; or

408 (ii) any private, nonprofit organization that receives funds from a governmental entity.

409 (b) "Contractor" does not mean a private provider.

410 (6) "Controlled record" means a record containing data on individuals that is controlled as
411 provided by Section 63G-2-304.

412 (7) "Designation," "designate," and their derivative forms mean indicating, based on a
413 governmental entity's familiarity with a record series or based on a governmental entity's
414 review of a reasonable sample of a record series, the primary classification that a
415 majority of records in a record series would be given if classified and the classification
416 that other records typically present in the record series would be given if classified.

417 (8) "Elected official" means each person elected to a state office, county office, municipal
418 office, school board or school district office, special district office, or special service
419 district office, but does not include judges.

420 (9) "Explosive" means a chemical compound, device, or mixture:

421 (a) commonly used or intended for the purpose of producing an explosion; and

422 (b) that contains oxidizing or combustive units or other ingredients in proportions,
423 quantities, or packing so that:

424 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the
425 compound or mixture may cause a sudden generation of highly heated gases; and

426 (ii) the resultant gaseous pressures are capable of:

427 (A) producing destructive effects on contiguous objects; or

428 (B) causing death or serious bodily injury.

429 (10) "Government audit agency" means any governmental entity that conducts an audit.

430 (11)(a) "Governmental entity" means:

431 (i) executive department agencies of the state, the offices of the governor, lieutenant
432 governor, state auditor, attorney general, and state treasurer, the Board of Pardons
433 and Parole, the Board of Examiners, the National Guard, the Career Service
434 Review Office, the State Board of Education, the Utah Board of Higher
435 Education, and the State Archives;

436 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal

- Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;
- (iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar administrative units in the judicial branch;
- (iv) any state-funded institution of higher education or public education; or
- (v) any political subdivision of the state, but, if a political subdivision has adopted an ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.
- (b) "Governmental entity" also means:
- (i) every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection (11)(a) that is funded or established by the government to carry out the public's business;
- (ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking, except for the Water District Water Development Council created pursuant to Section 11-13-228;
- (iii) as defined in Section 11-13a-102, a governmental nonprofit corporation;
- (iv) an association as defined in Section 53G-7-1101;
- (v) the Utah Independent Redistricting Commission; and
- (vi) a law enforcement agency, as defined in Section 53-1-102, that employs one or more law enforcement officers, as defined in Section 53-13-103.
- (c) "Governmental entity" does not include the Utah Educational Savings Plan created in Section 53B-8a-103.
- (12) "Government Records Office" means the same as that term is defined in Section 63A-12-201.
- ~~[(12)]~~ (13) "Gross compensation" means every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received from the individual's employer.
- ~~[(13)]~~ (14) "Individual" means a human being.
- ~~[(14)]~~ (15)(a) "Initial contact report" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties

describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may describe:

- (i) the date, time, location, and nature of the complaint, the incident, or offense;
- (ii) names of victims;
- (iii) the nature or general scope of the agency's initial actions taken in response to the incident;
- (iv) the general nature of any injuries or estimate of damages sustained in the incident;
- (v) the name, address, and other identifying information about any person arrested or charged in connection with the incident; or
- (vi) the identity of the public safety personnel, except undercover personnel, or prosecuting attorney involved in responding to the initial incident.

(b) Initial contact reports do not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified in Subsection [(14)(a)] (15)(a) appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

(c) Initial contact reports do not include accident reports, as that term is described in Title 41, Chapter 6a, Part 4, Accident Responsibilities.

[(15)] (16) "Legislative body" means the Legislature.

[(16)] (17) "Notice of compliance" means a statement confirming that a governmental entity has complied with an order of the [State Records Committee] director of the Government Records Office.

[(17)] (18) "Person" means:

- (a) an individual;
- (b) a nonprofit or profit corporation;
- (c) a partnership;
- (d) a sole proprietorship;
- (e) other type of business organization; or
- (f) any combination acting in concert with one another.

[(18)] (19) "Personal identifying information" means the same as that term is defined in Section 63A-12-100.5.

[(19)] (20) "Privacy annotation" means the same as that term is defined in Section 63A-12-100.5.

[(20)] (21) "Private provider" means any person who contracts with a governmental entity to

provide services directly to the public.

~~[(21)]~~ (22) "Private record" means a record containing data on individuals that is private as provided by Section 63G-2-302.

~~[(22)]~~ (23) "Protected record" means a record that is classified protected as provided by Section 63G-2-305.

~~[(23)]~~ (24) "Public record" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).

~~[(24)]~~ (25) "Reasonable search" means a search that is:

(a) reasonable in scope and intensity; and

(b) not unreasonably burdensome for the government entity.

~~[(25)]~~ (26)(a) "Record" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics:

(i) that is prepared, owned, received, or retained by a governmental entity or political subdivision; and

(ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.

(b) "Record" does not include:

(i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity:

(A) in a capacity other than the employee's or officer's governmental capacity; or

(B) that is unrelated to the conduct of the public's business;

(ii) a temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the originator is working;

(iii) material that is legally owned by an individual in the individual's private capacity;

(iv) material to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision;

(v) proprietary software;

(vi) junk mail or a commercial publication received by a governmental entity or an official or employee of a governmental entity;

(vii) a book that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public;

(viii) material that is cataloged, indexed, or inventoried and contained in the

539 collections of a library open to the public, regardless of physical form or
540 characteristics of the material;

541 (ix) a daily calendar ;

542 (x) a note prepared by the originator for the originator's own use or for the sole use of
543 an individual for whom the originator is working;

544 (xi) a computer program that is developed or purchased by or for any governmental
545 entity for its own use;

546 (xii) a note or internal memorandum prepared as part of the deliberative process by:

547 (A) a member of the judiciary;

548 (B) an administrative law judge;

549 (C) a member of the Board of Pardons and Parole; or

550 (D) a member of any other body, other than an association or appeals panel as
551 defined in Section 53G-7-1101, charged by law with performing a
552 quasi-judicial function;

553 (xiii) a telephone number or similar code used to access a mobile communication
554 device that is used by an employee or officer of a governmental entity, provided
555 that the employee or officer of the governmental entity has designated at least one
556 business telephone number that is a public record as provided in Section
557 63G-2-301;

558 (xiv) information provided by the Public Employees' Benefit and Insurance Program,
559 created in Section 49-20-103, to a county to enable the county to calculate the
560 amount to be paid to a health care provider under Subsection 17-50-319(2)(e)(ii);

561 (xv) information that an owner of unimproved property provides to a local entity as
562 provided in Section 11-42-205;

563 (xvi) a video or audio recording of an interview, or a transcript of the video or audio
564 recording, that is conducted at a Children's Justice Center established under
565 Section 67-5b-102;

566 (xvii) child sexual abuse material, as defined by Section 76-5b-103;

567 (xviii) before final disposition of an ethics complaint occurs, a video or audio
568 recording of the closed portion of a meeting or hearing of:

569 (A) a Senate or House Ethics Committee;

570 (B) the Independent Legislative Ethics Commission;

571 (C) the Independent Executive Branch Ethics Commission, created in Section
572 63A-14-202; or

573 (D) the Political Subdivisions Ethics Review Commission established in Section
574 63A-15-201;

575 (xix) confidential communication described in Section 58-60-102, 58-61-102, or
576 58-61-702;

577 (xx) any item described in Subsection [~~(25)~~(a)] (26)(a) that is:

578 (A) described in Subsection 63G-2-305(17), (18), or (23)(b); and

579 (B) shared between any of the following entities:

580 (I) the Division of Risk Management;

581 (II) the Office of the Attorney General;

582 (III) the governor's office; or

583 (IV) the Legislature; or

584 (xxi) the email address that a candidate for elective office provides to a filing officer
585 under Subsection 20A-9-201(5)(c)(ii) or 20A-9-203(4)(c)(iv).

586 [~~(26)~~] (27) "Record series" means a group of records that may be treated as a unit for
587 purposes of designation, description, management, or disposition.

588 [~~(27)~~] (28) "Records officer" means the individual appointed by the chief administrative
589 officer of each governmental entity, or the political subdivision to work with state
590 archives in the care, maintenance, scheduling, designation, classification, disposal, and
591 preservation of records.

592 [~~(28)~~] (29) "Schedule," "scheduling," and their derivative forms mean the process of
593 specifying the length of time each record series should be retained by a governmental
594 entity for administrative, legal, fiscal, or historical purposes and when each record series
595 should be transferred to the state archives or destroyed.

596 [~~(29)~~] (30) "Sponsored research" means research, training, and other sponsored activities as
597 defined by the federal Executive Office of the President, Office of Management and
598 Budget:

599 (a) conducted:

600 (i) by an institution within the state system of higher education defined in Section
601 53B-1-102; and

602 (ii) through an office responsible for sponsored projects or programs; and

603 (b) funded or otherwise supported by an external:

604 (i) person that is not created or controlled by the institution within the state system of
605 higher education; or

606 (ii) federal, state, or local governmental entity.

607 ~~[(30)]~~ (31) "State archives" means the Division of Archives and Records Service created in
608 Section 63A-12-101.

609 ~~[(31)]~~ (32) "State archivist" means the director of the state archives.

610 ~~[(32) "State Records Committee" means the State Records Committee created in Section~~
611 ~~63G-2-501.]~~

612 (33) "Summary data" means statistical records and compilations that contain data derived
613 from private, controlled, or protected information but that do not disclose private,
614 controlled, or protected information.

615 Section 11. Section **63G-2-201** is amended to read:

616 **63G-2-201 . Provisions relating to records -- Public records -- Private, controlled,**
617 **protected, and other restricted records -- Disclosure and nondisclosure of records --**
618 **Certified copy of record -- Limits on obligation to respond to record request.**

619 (1)(a) Except as provided in Subsection (1)(b), a person has the right to inspect a public
620 record free of charge, and the right to take a copy of a public record during normal
621 working hours, subject to Sections 63G-2-203 and 63G-2-204.

622 (b) A right under Subsection (1)(a) does not apply with respect to a record:

623 (i) a copy of which the governmental entity has already provided to the person;

624 (ii) that is the subject of a records request that the governmental entity is not required
625 to fill under Subsection (7)(a)(v); or

626 (iii)(A) that is accessible only by a computer or other electronic device owned or
627 controlled by the governmental entity;

628 (B) that is part of an electronic file that also contains a record that is private,
629 controlled, or protected; and

630 (C) that the governmental entity cannot readily segregate from the part of the
631 electronic file that contains a private, controlled, or protected record.

632 (2) A record is public unless otherwise expressly provided by statute.

633 (3) The following records are not public:

634 (a) a record that is private, controlled, or protected under Sections 63G-2-302, 63G-2-303,
635 63G-2-304, and 63G-2-305; and

636 (b) a record to which access is restricted pursuant to court rule, another state statute,
637 federal statute, or federal regulation, including records for which access is governed
638 or restricted as a condition of participation in a state or federal program or for
639 receiving state or federal funds.

640 (4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or 63G-2-305

may be classified private, controlled, or protected.

- (5)(a) A governmental entity may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section 63G-2-202, 63G-2-206, or 63G-2-303.
- (b) A governmental entity may disclose a record that is private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee, determines that:
- (i) there is no interest in restricting access to the record; or
 - (ii) the interests favoring access are greater than or equal to the interest favoring restriction of access.
- (c) In addition to the disclosure under Subsection (5)(b), a governmental entity may disclose a record that is protected under Subsection 63G-2-305(51) if:
- (i) the head of the governmental entity, or a designee, determines that the disclosure:
 - (A) is mutually beneficial to:
 - (I) the subject of the record;
 - (II) the governmental entity; and
 - (III) the public; and
 - (B) serves a public purpose related to:
 - (I) public safety; or
 - (II) consumer protection; and
 - (ii) the person who receives the record from the governmental entity agrees not to use or allow the use of the record for advertising or solicitation purposes.
- (6) A governmental entity shall provide a person with a certified copy of a record if:
- (a) the person requesting the record has a right to inspect it;
 - (b) the person identifies the record with reasonable specificity; and
 - (c) the person pays the lawful fees.
- (7)(a) In response to a request, a governmental entity is not required to:
- (i) create a record;
 - (ii) compile, format, manipulate, package, summarize, or tailor information;
 - (iii) provide a record in a particular format, medium, or program not currently maintained by the governmental entity;
 - (iv) fulfill a person's records request if the request unreasonably duplicates prior records requests from that person;

(v) fill a person's records request if:

(A) the record requested is:

(I) publicly accessible online; or

(II) included in a public publication or product produced by the governmental entity receiving the request; and

(B) the governmental entity:

(I) specifies to the person requesting the record where the record is accessible online; or

(II) provides the person requesting the record with the public publication or product and specifies where the record can be found in the public publication or product; or

(vi) fulfill a person's records request if:

(A) the person has been determined under Section 63G-2-209 to be a vexatious requester;

(B) the ~~[State Records Committee]~~ order of the director of the Government

Records Office determining the person to be a vexatious requester provides

that the governmental entity is not required to fulfill a request from the person for a period of time; and

(C) the period of time described in Subsection (7)(a)(vi)(B) has not expired.

(b) A governmental entity shall conduct a reasonable search for a requested record.

(8)(a) Although not required to do so, a governmental entity may, upon request from the person who submitted the records request, compile, format, manipulate, package, summarize, or tailor information or provide a record in a format, medium, or program not currently maintained by the governmental entity.

(b) In determining whether to fulfill a request described in Subsection (8)(a), a governmental entity may consider whether the governmental entity is able to fulfill the request without unreasonably interfering with the governmental entity's duties and responsibilities.

(c) A governmental entity may require a person who makes a request under Subsection (8)(a) to pay the governmental entity, in accordance with Section 63G-2-203, for providing the information or record as requested.

(9)(a) Notwithstanding any other provision of this chapter, and subject to Subsection (9)(b), a governmental entity is not required to respond to, or provide a record in response to, a record request if the request is submitted by or in behalf of an

individual who is confined in a jail or other correctional facility following the individual's conviction.

(b) Subsection (9)(a) does not apply to:

- (i) the first five record requests submitted to the governmental entity by or in behalf of an individual described in Subsection (9)(a) during any calendar year requesting only a record that contains a specific reference to the individual; or
- (ii) a record request that is submitted by an attorney of an individual described in Subsection (9)(a).

(10)(a) A governmental entity may allow a person requesting more than 50 pages of records to copy the records if:

- (i) the records are contained in files that do not contain records that are exempt from disclosure, or the records may be segregated to remove private, protected, or controlled information from disclosure; and
- (ii) the governmental entity provides reasonable safeguards to protect the public from the potential for loss of a public record.

(b) If the requirements of Subsection (10)(a) are met, the governmental entity may:

- (i) provide the requester with the facilities for copying the requested records and require that the requester make the copies; or
- (ii) allow the requester to provide the requester's own copying facilities and personnel to make the copies at the governmental entity's offices and waive the fees for copying the records.

(11)(a) A governmental entity that owns an intellectual property right and that offers the intellectual property right for sale or license may control by ordinance or policy the duplication and distribution of the material based on terms the governmental entity considers to be in the public interest.

(b) Nothing in this chapter shall be construed to limit or impair the rights or protections granted to the governmental entity under federal copyright or patent law as a result of its ownership of the intellectual property right.

(12) A governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and receive a copy of a record under this chapter.

(13) Subject to the requirements of Subsection (7), a governmental entity shall provide access to an electronic copy of a record in lieu of providing access to its paper equivalent if:

- (a) the person making the request requests or states a preference for an electronic copy;
- (b) the governmental entity currently maintains the record in an electronic format that is reproducible and may be provided without reformatting or conversion; and
- (c) the electronic copy of the record:
 - (i) does not disclose other records that are exempt from disclosure; or
 - (ii) may be segregated to protect private, protected, or controlled information from disclosure without the undue expenditure of public resources or funds.

(14) In determining whether a record is properly classified as private under Subsection 63G-2-302(2)(d), the governmental entity, ~~[State Records Committee]~~ the director of the Government Records Office, local appeals board, or court shall consider and weigh:

- (a) any personal privacy interests, including those in images, that would be affected by disclosure of the records in question; and
- (b) any public interests served by disclosure.

Section 12. Section **63G-2-209** is amended to read:

63G-2-209 . Vexatious requester.

(1) As used in this section:

~~[(a) "Committee" means the State Records Committee created in Section 63G-2-501.]~~

~~[(b) "Executive secretary" means an individual appointed as executive secretary under Subsection 63G-2-502(3).]~~

(a) "Director" means the director of the Government Records Office, created in Section 63A-12-202.

~~[(e)]~~ (b) "Respondent" means a person that a governmental entity claims is a vexatious requester under this section.

(2)(a) A governmental entity may file a petition with the ~~[committee]~~ director to request relief from a person that the governmental entity claims is a vexatious requester.

(b) A petition under Subsection (2)(a) shall~~[:]~~

~~[(i) be filed with the committee by submitting the petition to the executive secretary; and]~~

~~[(ii)]~~ contain:

~~[(A)]~~ (i) the name, phone number, mailing address, and email address that the respondent submitted to the governmental entity;

~~[(B)]~~ (ii) a description of the conduct that the governmental entity claims demonstrates that the respondent is a vexatious requester;

~~[(C)]~~ (iii) a statement of the relief the governmental entity seeks; and

- 777 ~~[(D)]~~ (iv) a sworn declaration or an unsworn declaration, as those terms are defined in
778 Section 78B-18a-102.
- 779 (c) On the day the governmental entity files a petition under Subsection (2)(a), the
780 governmental entity shall send a copy of the petition to the respondent.
- 781 (3)(a) Except as provided in Subsection (3)(c), no later than seven business days after
782 receiving the petition~~[the executive secretary]~~ , the director shall schedule a hearing~~[~~
783 ~~for the committee]~~ to consider the petition, to be held:
- 784 (i)(A) at the next ~~[regularly scheduled committee meeting falling]~~
785 regularly-scheduled hearing date that is at least 16 calendar days after the ~~[date]~~
786 day on which the petition is filed but no later than 64 calendar days after the [
787 date] day on which the petition is filed; or
- 788 (B) at a ~~[regularly scheduled committee meeting]~~ regularly-scheduled hearing date
789 that is later than the period described in Subsection (3)(a)(i)(A) if the later [
790 ~~committee meeting]~~ hearing date is the first ~~[regularly scheduled committee~~
791 ~~meeting]~~ regularly-scheduled hearing date at which there are fewer than 10
792 appeals scheduled to be heard; or
- 793 (ii) to the extent practicable, at a date sooner than a period described in Subsection
794 (3)(a)(i) if the governmental entity:
- 795 (A) requests an expedited hearing; and
796 (B) shows good cause for the expedited hearing.
- 797 (b) If the ~~[executive secretary]~~ director schedules a hearing under Subsection (3)(a), the [
798 ~~executive secretary]~~ director shall:
- 799 ~~[(i) send a copy of the petition to each member of the committee;]~~
800 ~~[(ii)]~~ (i) send a copy of the notice of hearing to the governmental entity~~;~~ and the
801 respondent~~[, and each member of the committee];~~ and
- 802 ~~[(iii)]~~ (ii) if applicable, send a copy of the respondent's statement under Subsection [
803 ~~(3)(c)(ii)]~~ (3)(c)(ii)(B) to the governmental entity~~[and each member of the~~
804 ~~committee].~~
- 805 ~~[(e)(i) The executive secretary may decline to schedule a hearing if:]~~
- 806 ~~[(A) the executive secretary recommends that the committee deny the petition~~
807 ~~without a hearing because the petition does not warrant a hearing;]~~
- 808 ~~[(B) the executive secretary consults with the chair of the committee and at least~~
809 ~~one other member of the committee; and]~~
- 810 ~~[(C) the chair of the committee and all committee members with whom the~~

- 811 executive secretary consults under this Subsection (3)(c)(i) agree with the
812 executive secretary's recommendation to deny the petition without a hearing.]
- 813 [(ii) The executive secretary may, in making the determination described in
814 Subsection (3)(c)(i)(A), request that the respondent submit a written response to
815 the petition.]
- 816 [(d) If the executive secretary declines to schedule a hearing in accordance with
817 Subsection (3)(c):]
- 818 [(i) the executive secretary shall send a notice to the governmental entity and the
819 respondent indicating that the request for a hearing has been denied and the
820 reasons for the denial; and]
- 821 [(ii) the committee shall:]
- 822 [(A) vote at the committee's next regular meeting to accept or reject the
823 recommendation to deny the petition without a hearing;]
- 824 [(B) issue an order that includes the reasons for the committee's decision to accept
825 or reject the recommendation; and]
- 826 [(C) if the committee rejects the recommendation to deny the petition without a
827 hearing, direct the executive secretary to schedule a hearing as provided in
828 Subsection (3)(a).]
- 829 (c) The director may decline to schedule a hearing if:
- 830 (i) the director makes an initial determination that the petition should be denied
831 without a hearing; and
- 832 (ii) before the director makes a final ruling to deny the petition, the director:
- 833 (A) provides the parties with notice of the initial determination described in
834 Subsection (3)(c)(i), including the reasons for the initial determination;
- 835 (B) provides the parties with a reasonable opportunity to respond to the initial
836 determination described in Subsection (3)(c)(i); and
- 837 (C) provides the respondent with a reasonable opportunity to submit a written
838 response to the petition.
- 839 (d) If, after complying with Subsection (3)(c), the director makes a final ruling denying
840 the petition without a hearing, the director shall:
- 841 (i) issue an order denying the petition; and
- 842 (ii) include in the order the reasons for denying the petition and the reasons for
843 making the ruling without a hearing.
- 844 (e) If, after complying with Subsection (3)(c), the director determines that a hearing

- 845 should be held, the director shall schedule a hearing in accordance with Subsection
846 (3)(a).
- 847 (4)(a) No later than five business days before the day of the hearing, the respondent may
848 submit to the [~~executive secretary~~] director and the governmental entity a written
849 statement in response to the governmental entity's petition.
- 850 (b) The written statement described in Subsection (4)(a) may be the same document as
851 the respondent's written response described in Subsection [~~(3)(c)(ii)~~] (3)(c)(ii)(C).
- 852 (5) No later than 10 business days before the day of a hearing under this section, a person
853 whose legal interests may be substantially affected by the proceeding may file a request
854 for intervention with the [~~committee~~] director as provided in Subsection 63G-2-403(6).
- 855 (6) If a respondent fails to submit a written statement under Subsection (4) or fails to appear
856 at the hearing, the [~~committee~~] director shall:
- 857 (a) cancel the hearing; or
858 (b) hold the hearing in accordance with Subsection (7).
- 859 (7)(a) If the [~~committee~~] director holds a hearing scheduled under Subsection (3), the [
860 ~~committee~~] director shall:
- 861 (i) allow the governmental entity to testify, present evidence, and comment on the
862 issues; and
863 (ii) allow the respondent to testify, present evidence, and comment on the issues if
864 the respondent appears at the hearing.
- 865 (b) At the hearing, the [~~committee~~] director may allow another interested person to
866 comment on the issues.
- 867 (c)(i) Discovery is prohibited, but the [~~committee~~] director may issue subpoenas or
868 other orders to compel production of necessary testimony or evidence.
869 (ii) If the subject of a [~~committee~~] director's subpoena disobeys or fails to comply
870 with the subpoena, the [~~committee~~] director may file a motion with the district
871 court for an order to compel obedience to the subpoena.
- 872 (8)(a) No later than seven business days after the day on which a hearing is held as
873 scheduled under Subsection (3) or the date on which a hearing cancelled under
874 Subsection (6) was scheduled to be held, the [~~committee~~] director shall:
- 875 (i) determine, in accordance with Subsection (9), whether the governmental entity has
876 demonstrated that the respondent is a vexatious requester; and
877 (ii) issue a signed order that grants or denies the petition in whole or in part.
- 878 (b) Upon granting the petition in whole or in part, the [~~committee~~] director may order

that the governmental entity is not required to fulfill requests from the respondent or a person that submits a request on the respondent's behalf for a period of time that may not exceed one year.

(c) The [committee's] director's order shall contain:

(i) a statement of the reasons for the [committee's] director's decision;

(ii) if the petition is granted in whole or in part, a specific description of the conduct the [committee] director determines demonstrates that the respondent is a vexatious requester, including any conduct the [committee] director finds to constitute an abuse of the right of access to information under this chapter or a substantial interference with the operations of the governmental entity;

(iii) a statement that the respondent or governmental entity may seek judicial review of the [committee's] director's decision in district court as provided in Section 63G-2-404; and

(iv) a brief summary of the judicial review process, the time limits for seeking judicial review, and a notice that, in order to protect applicable rights in connection with the judicial review, the person seeking judicial review of the [committee's] director's decision may wish to seek advice from an attorney.

(9) In determining whether a governmental entity has demonstrated that the respondent is a vexatious requester, the [committee] director shall consider:

~~[(a) the interests described in Section 63G-2-102;]~~

~~[(b)]~~ (a) as applicable:

(i) the number of requests the respondent has submitted to the governmental entity, including the number of pending record requests;

(ii) the scope, nature, content, language, and subject matter of record requests the respondent has submitted to the governmental entity;

(iii) the nature, content, language, and subject matter of any communications to the governmental entity related to a record request of the respondent; and

(iv) any pattern of conduct that the [committee] director determines to constitute:

(A) an abuse of the right of access to information under this chapter; or

(B) substantial interference with the operations of the governmental entity; and

~~[(e)]~~ (b) any other factor the [committee] director considers relevant.

(10)(a) A governmental entity or respondent aggrieved by the [committee's] director's decision under this section may seek judicial review of the decision as provided in Section 63G-2-404.

- (b) In a judicial review under Subsection (10)(a), the court may award reasonable attorney fees to a respondent if:
- (i) the respondent substantially prevails; and
 - (ii) the court determines that:
 - (A) the petition filed by the governmental entity under Subsection (2) is without merit; and
 - (B) the governmental entity's actions in filing the petition lack a reasonable basis in fact or law.

(c) Except for the waiver of immunity in Subsection 63G-7-301(2)(e), a claim for attorney fees under this Subsection (10) is not subject to Chapter 7, Governmental Immunity Act of Utah.

(11) Notwithstanding any other provision of this chapter, a records request that a governmental entity is not required to fulfill in accordance with an order issued under this section may not be the subject of an appeal under Part 4, Appeals.

(12) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the [~~committee~~] director shall make rules to implement the procedures and requirements described in this section.

Section 13. Section **63G-2-309** is amended to read:

63G-2-309 . Confidentiality claims.

- (1)(a)(i) Any person who provides to a governmental entity a record that the person believes should be protected under Subsection 63G-2-305(1) or (2) or both Subsections 63G-2-305(1) and (2) shall provide with the record:
- (A) a written claim of business confidentiality; and
 - (B) a concise statement of reasons supporting the claim of business confidentiality.
- (ii) Any of the following who provides to an institution within the state system of higher education defined in Section 53B-1-102 a record that the person or governmental entity believes should be protected under Subsection 63G-2-305(40)(a)(ii) or (vi) or both Subsections 63G-2-305(40)(a)(ii) and (vi) shall provide the institution within the state system of higher education a written claim of business confidentiality in accordance with Section 53B-16-304:
- (A) a person;
 - (B) a federal governmental entity;
 - (C) a state governmental entity; or
 - (D) a local governmental entity.

- (b) A person or governmental entity who complies with this Subsection (1) shall be notified by the governmental entity to whom the request for a record is made if:
- (i) a record claimed to be protected under one of the following is classified public:
 - (A) Subsection 63G-2-305(1);
 - (B) Subsection 63G-2-305(2);
 - (C) Subsection 63G-2-305(40)(a)(ii);
 - (D) Subsection 63G-2-305(40)(a)(vi); or
 - (E) a combination of the provisions described in Subsections (1)(b)(i)(A) through (D); or
 - (ii) the governmental entity to whom the request for a record is made determines that the record claimed to be protected under a provision listed in Subsection (1)(b)(i) should be released after balancing interests under Subsection 63G-2-201(5)(b) or 63G-2-401(6).
- (c) A person who makes a claim of business confidentiality under this Subsection (1) shall protect, defend, and indemnify the governmental entity that retains the record, and all staff and employees of the governmental entity from and against any claims, liability, or damages resulting from or arising from a denial of access to the record as a protected record based on the claim of business confidentiality.

(2)(a) Except as provided in Subsection (2)(b) or by court order, the governmental entity to whom the request for a record is made may not disclose a record claimed to be protected under a provision listed in Subsection (1)(b)(i) but which the governmental entity or ~~[State Records Committee]~~ the director of the Government Records Office determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal.

(b) Subsection (2)(a) does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the ~~[State Records Committee]~~ director of the Government Records Office.

(3) Disclosure or acquisition of information under this chapter does not constitute misappropriation under Subsection 13-24-2(2).

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

Section 14. Section **63G-2-400.5** is amended to read:

63G-2-400.5 . Definitions.

As used in this part:

(1) "Access denial" means a governmental entity's denial, under Subsection 63G-2-204(9)

or Section 63G-2-205, in whole or in part, of a record request.

(2) "Appellate affirmation" means a decision of a chief administrative officer, a local appeals board, or ~~[State Records Committee]~~ the director affirming an access denial.

(3) "Director" means the director of the Government Records Office.

~~[(3)]~~ (4) "Interested party" means a person, other than a requester, who is aggrieved by an access denial or an appellate affirmation, regardless of whether ~~[or not]~~ the person participated in proceedings leading to the access denial or appellate affirmation.

~~[(4)]~~ (5) "Local appeals board" means an appeals board established by a political subdivision under Subsection 63G-2-701(5)(c).

~~[(5)]~~ (6) "Record request" means a request for a record under Section 63G-2-204.

~~[(6)]~~ (7) "Records~~-committee~~ appellant" means:

(a) a political subdivision that seeks to appeal a decision of a local appeals board to the ~~[State Records Committee]~~ director; or

(b) a requester or interested party who seeks to appeal to the ~~[State Records Committee]~~ director a decision affirming an access denial.

~~[(7)]~~ (8) "Requester" means a person who submits a record request to a governmental entity.

Section 15. Section **63G-2-401** is amended to read:

63G-2-401 . Appeal to chief administrative officer -- Notice of the decision of the appeal.

(1)(a) A requester or interested party may appeal an access denial or the denial of a fee waiver under Subsection 63G-2-203(4) to the chief administrative officer of the governmental entity by filing a notice of appeal with the chief administrative officer within 30 days after:

(i) for an access denial:

(A) the governmental entity sends a notice of denial under Section 63G-2-205, if the governmental entity denies a record request under Subsection 63G-2-205 (1); or

(B) the record request is considered denied under Subsection 63G-2-204(9), if that subsection applies; or

(ii) for a denial of a fee waiver, the date the governmental entity notifies the requester that the fee waiver is denied.

(b) If a governmental entity claims extraordinary circumstances and specifies the date when the records will be available under Subsection 63G-2-204(4), and, if the requester believes the extraordinary circumstances do not exist or that the date

specified is unreasonable, the requester may appeal the governmental entity's claim of extraordinary circumstances or date for compliance to the chief administrative officer by filing a notice of appeal with the chief administrative officer within 30 days after notification of a claim of extraordinary circumstances by the governmental entity, despite the lack of a "determination" or its equivalent under Subsection 63G-2-204(9).

(2) A notice of appeal shall contain:

- (a) the name, mailing address, and daytime telephone number of the requester or interested party; and
- (b) the relief sought.

(3) The requester or interested party may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4)(a) If the appeal involves a record that is the subject of a business confidentiality claim under Section 63G-2-309, the chief administrative officer shall:

- (i) send notice of the appeal to the business confidentiality claimant within three business days after receiving notice, except that if notice under this section must be given to more than 35 persons, it shall be given as soon as reasonably possible; and
- (ii) send notice of the business confidentiality claim and the schedule for the chief administrative officer's determination to the requester or interested party within three business days after receiving notice of the appeal.

(b) The business confidentiality claimant shall have seven business days after notice is sent by the administrative officer to submit further support for the claim of business confidentiality.

(5)(a) The chief administrative officer shall make a decision on the appeal within:

- (i)(A) 10 business days after the chief administrative officer's receipt of the notice of appeal; or
- (B) five business days after the chief administrative officer's receipt of the notice of appeal, if the requester or interested party demonstrates that an expedited decision benefits the public rather than the requester or interested party; or
- (ii) 12 business days after the governmental entity sends the notice of appeal to a person who submitted a claim of business confidentiality.

(b)(i) If the chief administrative officer fails to make a decision on an appeal of an access denial within the time specified in Subsection (5)(a), the failure is the

equivalent of a decision affirming the access denial.

(ii) If the chief administrative officer fails to make a decision on an appeal under Subsection (1)(b) within the time specified in Subsection (5)(a), the failure is the equivalent of a decision affirming the claim of extraordinary circumstances or the reasonableness of the date specified when the records will be available.

(c) The provisions of this section notwithstanding, the parties participating in the proceeding may, by agreement, extend the time periods specified in this section.

(6) Except as provided in Section 63G-2-406, the chief administrative officer may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 if the interests favoring access are greater than or equal to the interests favoring restriction of access.

(7)(a) The governmental entity shall send written notice of the chief administrative officer's decision to all participants.

(b) If the chief administrative officer's decision is to affirm the access denial in whole or in part or to affirm the fee waiver denial, the notice under Subsection (7)(a) shall include:

(i) a statement that the requester has a right under Section ~~[63A-12-111]~~ 63A-12-204 to request the government records ombudsman to mediate the dispute between the requester and the governmental entity concerning the access denial or the fee waiver denial;

(ii) a statement that the requester or interested party has the right to appeal the decision, as provided in Section 63G-2-402, to:

(A) the ~~[State Records Committee]~~ director or district court; or

(B) the local appeals board, if the governmental entity is a political subdivision and the governmental entity has established a local appeals board;

(iii) the time limits for filing an appeal described in Subsection (7)(b)(ii), including an explanation of a suspension of the time limits, as provided in Subsections 63G-2-403(1)(c) and 63G-2-404(1)(b), for a requester if the requester seeks mediation under Section ~~[63A-12-111]~~ 63A-12-204; and

(iv) the name and business address of:

~~[(A) the executive secretary of the State Records Committee;]~~

(A) the director;

1083 (B) the individual designated as the contact individual for the appeals board, if the
 1084 governmental entity is a political subdivision that has established an appeals
 1085 board under Subsection 63G-2-701(5)(c); and

1086 (C) the government records ombudsman.

1087 (8)(a) A person aggrieved by a governmental entity's classification or designation
 1088 determination under this chapter, but who is not requesting access to the records, may
 1089 appeal that determination using the procedures provided in this section.

1090 (b) If a nonrequester is the only appellant, the procedures provided in this section shall
 1091 apply, except that the decision on the appeal shall be made within 30 days [after
 1092 receiving] after the day on which the appellant files the notice of appeal.

1093 (9) The duties of the chief administrative officer under this section may be delegated.

1094 Section 16. Section **63G-2-402** is amended to read:

1095 **63G-2-402 . Appealing a decision of a chief administrative officer.**

1096 (1) If the decision of the chief administrative officer of a governmental entity under Section
 1097 63G-2-401 is to affirm the denial of a record request or to affirm the denial of a fee
 1098 waiver, the requester may:

1099 (a)(i) appeal the decision to the [~~State Records Committee~~] director, as provided in
 1100 Section 63G-2-403; or

1101 (ii) petition for judicial review of the decision in district court, as provided in Section
 1102 63G-2-404;

1103 (b) seek mediation of the access denial or fee waiver denial under Subsection [
 1104 63A-12-111(2)(e)] 63A-12-204(1)(a)(iii); or

1105 (c) appeal the decision to the local appeals board if:

1106 (i) the decision is of a chief administrative officer of a governmental entity that is a
 1107 political subdivision; and

1108 (ii) the political subdivision has established a local appeals board.

1109 (2) A requester who appeals a chief administrative officer's decision to the [~~State Records~~
 1110 ~~Committee~~] director or a local appeals board does not lose or waive the right to seek
 1111 judicial review of the decision of the [~~State Records Committee~~] director or the local
 1112 appeals board.

1113 (3) As provided in Section 63G-2-403, an interested party may appeal to the [~~State Records~~
 1114 ~~Committee~~] director of the Government Records Office a chief administrative officer's
 1115 decision under Section 63G-2-401 affirming an access denial.

1116 *The following section is affected by a coordination clause at the end of this bill.*

1117 Section 17. Section **63G-2-403** is amended to read:

1118 **63G-2-403 . Appeals to the director of the Government Records Office.**

1119 (1)(a) A records [~~committee~~]appellant appeals to the [~~State Records Committee~~] director
1120 by filing a notice of appeal with the [~~executive secretary of the State Records~~
1121 ~~Committee~~] director no later than 30 days after [~~the date of issuance of~~] the day on
1122 which the decision being appealed is issued.

1123 (b) Notwithstanding Subsection (1)(a), a requester may file a notice of appeal with the [~~executive secretary of the State Records Committee~~] director no later than 45 days
1124 after the day on which the record request is made if:
1125

1126 (i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and

1127 (ii) the chief administrative officer fails to make a decision under Section 63G-2-401.

1128 (c) The time for a requester to file a notice of appeal under Subsection (1)(a) or (b) is
1129 suspended for the period of time that:

1130 (i) begins on the date the requester submits a request under Section [~~63A-12-111~~]
1131 63A-12-204 for the government records ombudsman to mediate the dispute
1132 between the requester and the governmental entity; and

1133 (ii) ends the earlier of the following dates:

1134 (A) the date that the government records ombudsman certifies in writing that the
1135 mediation is concluded; or

1136 (B) the date that the government records ombudsman certifies in writing that the
1137 mediation did not occur or was not concluded because of a lack of the required
1138 consent.

1139 (2) The notice of appeal shall:

1140 (a) contain the name, mailing address, and daytime telephone number of the records [~~committee~~]appellant;
1141

1142 (b) be accompanied by a copy of the decision being appealed; and

1143 (c) state the relief sought.

1144 (3) The records [~~committee~~]appellant:

1145 (a) shall, on the day on which the notice of appeal is filed with the [~~State Records~~
1146 ~~Committee~~] director, serve a copy of the notice of appeal on:

1147 (i) the governmental entity whose access denial or fee waiver denial is the subject of
1148 the appeal, if the records [~~committee~~]appellant is a requester or interested party; or

1149 (ii) the requester or interested party who is a party to the local appeals board
1150 proceeding that resulted in the decision that the political subdivision is appealing

1151 to the ~~[committee]~~ director, if the records ~~[committee]~~ appellant is a political
 1152 subdivision; and

1153 (b) may file a short statement of facts, reasons, and legal authority in support of the
 1154 appeal.

1155 (4)(a) Except as provided in Subsections (4)(b) and (c), no later than seven business
 1156 days after receiving a notice of appeal, the ~~[executive secretary of the State Records~~
 1157 ~~Committee]~~ director shall:

1158 (i) schedule a hearing for the ~~[State Records Committee]~~ director to discuss the appeal
 1159 at the next regularly scheduled ~~[committee meeting falling]~~ hearing date that is at
 1160 least 16 calendar days after the date the notice of appeal is filed but no ~~[longer]~~
 1161 later than 64 calendar days after the date the notice of appeal ~~[was]~~ is filed, except
 1162 that the ~~[committee]~~ director may schedule an expedited hearing upon application
 1163 of the records ~~[committee]~~ appellant and good cause shown;

1164 (ii) send a copy of the notice of hearing to the records ~~[committee]~~ appellant; and

1165 (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing
 1166 to:

1167 ~~[(A) each member of the State Records Committee;]~~

1168 ~~[(B)]~~ (A) the records officer and the chief administrative officer of the
 1169 governmental entity whose access denial is the subject of the appeal, if the
 1170 records ~~[committee]~~ appellant is a requester or interested party;

1171 ~~[(C)]~~ (B) any person who made a business confidentiality claim under Section
 1172 63G-2-309 for a record that is the subject of the appeal; and

1173 ~~[(D)]~~ (C) all persons who participated in the proceedings before the governmental
 1174 entity's chief administrative officer, if the appeal is of the chief administrative
 1175 officer's decision affirming an access denial.

1176 (b)(i) The ~~[executive secretary of the State Records Committee]~~ director may decline
 1177 to schedule a hearing if the record series that is the subject of the appeal has been
 1178 found by the ~~[committee]~~ director in a previous hearing involving the same
 1179 governmental entity to be appropriately classified as private, controlled, or
 1180 protected.

1181 (ii)~~[(A)]~~ If the ~~[executive secretary of the State Records Committee]~~ director
 1182 declines to schedule a hearing, the ~~[executive secretary]~~ director shall send a
 1183 notice to the records ~~[committee]~~ appellant indicating that the request for
 1184 hearing has been denied and the reason for the denial.

1185 ~~[(B) The State Records Committee shall make rules to implement this section as~~
1186 ~~provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.]~~

1187 (c) The ~~[executive secretary of the State Records Committee]~~ director may schedule a
1188 hearing on an appeal to the ~~[State Records Committee at]~~ director on a regularly~~[-]~~ -
1189 scheduled ~~[State Records Committee meeting]~~ hearing date that is later than the
1190 period described in Subsection (4)(a)(i) if that ~~[committee meeting]~~ hearing date is
1191 the first regularly~~[-]~~ -scheduled ~~[State Records Committee meeting]~~ hearing date at
1192 which there are fewer than 10 appeals scheduled to be heard.

1193 (5)(a) No later than five business days before the day of the hearing, a governmental
1194 entity shall submit to the ~~[executive secretary of the State Records Committee]~~
1195 director a written statement of facts, reasons, and legal authority in support of the
1196 governmental entity's position.

1197 (b) The governmental entity shall send a copy of the written statement by first class
1198 mail, postage prepaid, to the requester or interested party involved in the appeal. [
1199 ~~The executive secretary shall forward a copy of the written statement to each member~~
1200 ~~of the State Records Committee.]~~

1201 (6)(a) No later than 10 business days after the day on which the ~~[executive secretary]~~
1202 director sends the notice of appeal, a person whose legal interests may be
1203 substantially affected by the proceeding may file a request for intervention with the [
1204 ~~State Records Committee]~~ director.

1205 (b) Any written statement of facts, reasons, and legal authority in support of the
1206 intervener's position shall be filed with the request for intervention.

1207 (c) The person seeking intervention shall provide copies of the statement described in
1208 Subsection (6)(b) to all parties to the proceedings before the ~~[State Records~~
1209 ~~Committee]~~ director.

1210 (7)(a) The ~~[State Records Committee]~~ director shall hold a hearing within the period of
1211 time described in Subsection (4).

1212 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1213 division shall make rules requiring that a hearing under this section is open to the
1214 public in substantially the same manner as a meeting under Title 52, Chapter 4, Open
1215 and Public Meetings Act.

1216 (8) At the hearing, the ~~[State Records Committee]~~ director:
1217 (a) shall allow the parties to testify, present evidence, and comment on the issues~~[-The~~
1218 ~~committee]~~ ; and

- 1219 (b) may allow other interested persons to comment on the issues.
- 1220 (9)(a)(i) The ~~[State Records Committee]~~ director:
- 1221 (A) may review the disputed records; and
- 1222 (B) shall review the disputed records, if the ~~[committee]~~ director is weighing the
- 1223 various interests under Subsection (11).
- 1224 (ii) A review of the disputed records under Subsection (9)(a)(i) shall be in camera.
- 1225 (b) ~~[Members of the State Records Committee]~~ The director may not disclose any
- 1226 information or record reviewed by the ~~[committee]~~ director in camera unless the
- 1227 disclosure is otherwise authorized by this chapter.
- 1228 (10)(a) Discovery is prohibited, but the ~~[State Records Committee]~~ director may issue
- 1229 subpoenas or other orders to compel production of necessary evidence.
- 1230 (b) When the subject of a ~~[State Records Committee]~~ subpoena issued by the director
- 1231 disobeys or fails to comply with the subpoena, the ~~[committee]~~ director may file a
- 1232 motion for an order to compel obedience to the subpoena with the district court.
- 1233 (c)(i) The ~~[State Records Committee's]~~ director's review shall be de novo, if the
- 1234 appeal is an appeal from a decision of a chief administrative officer:
- 1235 (A) issued under Section 63G-2-401; or
- 1236 (B) issued by a chief administrative officer of a political subdivision that has not
- 1237 established a local appeals board.
- 1238 (ii) For an appeal from a decision of a local appeals board, the ~~[State Records~~
- 1239 ~~Committee]~~ director shall review and consider the decision of the local appeals
- 1240 board.
- 1241 (11)(a) No later than seven business days after the day of the hearing, the ~~[State Records~~
- 1242 ~~Committee]~~ director shall issue a signed order:
- 1243 (i) granting the relief sought, in whole or in part; or
- 1244 (ii) upholding the governmental entity's access denial, in whole or in part.
- 1245 (b) Except as provided in Section 63G-2-406, the ~~[State Records Committee]~~ director
- 1246 may, upon consideration and weighing of the various interests and public policies
- 1247 pertinent to the classification and disclosure or nondisclosure, order the disclosure of
- 1248 information properly classified as private, controlled, or protected if the public
- 1249 interest favoring access is greater than or equal to the interest favoring restriction of
- 1250 access.
- 1251 (c) In making a determination under Subsection (11)(b), the ~~[State Records Committee]~~
- 1252 director shall consider and, where appropriate, limit the requester's or interested

- 1253 party's use and further disclosure of the record in order to protect:
- 1254 (i) privacy interests in the case of a private or controlled record;
- 1255 (ii) business confidentiality interests in the case of a record protected under
- 1256 Subsection 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and
- 1257 (iii) privacy interests or the public interest in the case of other protected records.
- 1258 (12) The order of the ~~[State Records Committee]~~ director shall include:
- 1259 (a) a statement of reasons for the decision, including citations to this chapter, court rule
- 1260 or order, another state statute, federal statute, or federal regulation that governs
- 1261 disclosure of the record, if the citations do not disclose private, controlled, or
- 1262 protected information;
- 1263 (b) a description of the record or portions of the record to which access ~~[was]~~ is ordered
- 1264 or denied, if the description does not disclose private, controlled, or protected
- 1265 information or information exempt from disclosure under Subsection 63G-2-201
- 1266 (3)(b);
- 1267 (c) a statement that any party to the proceeding before the ~~[State Records Committee]~~
- 1268 director may appeal the ~~[committee's]~~ director's decision to district court; and
- 1269 (d) a brief summary of the appeals process, the time limits for filing an appeal, and a
- 1270 notice that in order to protect its rights on appeal, the party may wish to seek advice
- 1271 from an attorney.
- 1272 (13)(a) If the ~~[State Records Committee]~~ director fails to issue a decision within 73
- 1273 calendar days after the day of the filing of the notice of appeal, that failure is the
- 1274 equivalent of an order denying the appeal.~~[-]~~
- 1275 (b) A records ~~[committee]~~ appellant shall notify the ~~[State Records Committee]~~ director
- 1276 in writing if the records ~~[committee]~~ appellant considers the appeal denied.
- 1277 (14) A party to a proceeding before the ~~[State Records Committee]~~ director may seek
- 1278 judicial review in district court of a ~~[State Records Committee]~~ director's order by filing
- 1279 a petition for review of the order as provided in Section 63G-2-404.
- 1280 (15)(a) Unless a notice of intent to appeal is filed under Subsection (15)(b), each party to
- 1281 the proceeding shall comply with the order of the ~~[State Records Committee]~~ director.
- 1282 (b) If a party disagrees with the order of the ~~[State Records Committee]~~ director, that
- 1283 party may file a notice of intent to appeal the order.
- 1284 (c) If the ~~[State Records Committee]~~ director orders the governmental entity to produce
- 1285 a record and no appeal is filed, or if, as a result of the appeal, the governmental entity
- 1286 is required to produce a record, the governmental entity shall:

1287 (i) produce the record; and
1288 (ii) file a notice of compliance with the ~~[committee]~~ director.
1289 (d)(i) If the governmental entity that is ordered to produce a record fails to file a
1290 notice of compliance or a notice of intent to appeal, the ~~[State Records Committee]~~
1291 director may do either or both of the following:
1292 (A) impose a civil penalty of up to \$500 for each day of continuing
1293 noncompliance; or
1294 (B) send written notice of the governmental entity's noncompliance to the
1295 governor.
1296 (ii) In imposing a civil penalty, the ~~[State Records Committee]~~ director shall consider
1297 the gravity and circumstances of the violation, including whether the failure to
1298 comply was due to neglect or was willful or intentional.
1299 Section 18. Section **63G-2-404** is amended to read:
1300 **63G-2-404 . Judicial review.**
1301 (1)(a) A petition for judicial review of an order or decision, as allowed under this part, in
1302 Section 63G-2-209, or in Subsection 63G-2-701(6)(a)(ii), shall be filed no later than
1303 30 days after the date of the order or decision, subject to Subsection (1)(b).
1304 (b) The time for a requester to file a petition for judicial review under Subsection (1)(a)
1305 is suspended for the period of time that:
1306 (i) begins the date the requester submits a request under Section ~~[63A-12-111]~~
1307 63A-12-204 for the government records ombudsman to mediate the dispute
1308 between the requester and the governmental entity; and
1309 (ii) ends the earlier of the following dates:
1310 (A) the date that the government records ombudsman certifies in writing that the
1311 mediation is concluded; or
1312 (B) the date that the government records ombudsman certifies in writing that the
1313 mediation did not occur or was not concluded because of a lack of the required
1314 consent.
1315 (2)(a) A petition for judicial review is a complaint governed by the Utah Rules of Civil
1316 Procedure and shall contain:
1317 (i) the petitioner's name and mailing address;
1318 (ii) a copy of the ~~[State Records Committee]~~ director's order from which the appeal is
1319 taken, if the petitioner is seeking judicial review of an order of the ~~[State Records~~
1320 ~~Committee]~~ director;

- 1321 (iii) the name and mailing address of the governmental entity that issued the initial
1322 determination with a copy of that determination;
- 1323 (iv) a request for relief specifying the type and extent of relief requested; and
1324 (v) a statement of the reasons why the petitioner is entitled to relief.
- 1325 (b) Except in exceptional circumstances, a petition for judicial review may not raise an
1326 issue that was not raised in the underlying appeal and order.
- 1327 (3) If the appeal is based on the denial of access to a protected record based on a claim of
1328 business confidentiality, the court shall allow the claimant of business confidentiality to
1329 provide to the court the reasons for the claim of business confidentiality.
- 1330 (4) All additional pleadings and proceedings in the district court are governed by the Utah
1331 Rules of Civil Procedure.
- 1332 (5)(a) The district court may review the disputed records.~~[-The-]~~
- 1333 (b) A review described in Subsection (5)(a) shall be in camera.
- 1334 (6)(a) The court shall:
- 1335 (i) make the court's decision de novo, but, for a petition seeking judicial review of a [
1336 ~~State Records Committee-~~ director's order, allow introduction of evidence
1337 presented to the [~~State Records Committee-~~ director];
- 1338 (ii) determine all questions of fact and law without a jury; and
1339 (iii) decide the issue at the earliest practical opportunity.
- 1340 (b) A court may remand a petition for judicial review to the [~~State Records Committee-~~
1341 director if:
- 1342 (i) the remand is to allow the [~~State Records Committee-~~ director to decide an issue
1343 that:
- 1344 (A) involves access to a record; and
1345 (B) the [~~State Records Committee has not previously addressed~~] director did not
1346 address in the proceeding that led to the petition for judicial review; and
- 1347 (ii) the court determines that remanding to the [~~State Records Committee-~~ director is
1348 in the best interests of justice.
- 1349 (7)(a) Except as provided in Section 63G-2-406, the court may, upon consideration and
1350 weighing of the various interests and public policies pertinent to the classification
1351 and disclosure or nondisclosure, order the disclosure of information properly
1352 classified as private, controlled, or protected if the interest favoring access is greater
1353 than or equal to the interest favoring restriction of access.
- 1354 (b) The court shall consider and, where appropriate, limit the requester's use and further

disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63G-2-305(1) and (2), and privacy interests or the public interest in the case of other protected records.

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

Section 19. Section **63G-2-701** is amended to read:

63G-2-701 . Political subdivisions may adopt ordinances in compliance with chapter -- Appeal process.

(1) As used in this section:

(a) "Access denial" means the same as that term is defined in Section 63G-2-400.5.

(b) "Interested party" means the same as that term is defined in Section 63G-2-400.5.

(c) "Requester" means the same as that term is defined in Section 63G-2-400.5.

(2)(a) Each political subdivision may adopt an ordinance or a policy applicable throughout its jurisdiction relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention, and amendment of records.

(b) The ordinance or policy shall comply with the criteria set forth in this section.

(c) If any political subdivision does not adopt and maintain an ordinance or policy, then that political subdivision is subject to this chapter.

(d) Notwithstanding the adoption of an ordinance or policy, each political subdivision is subject to Part 1, General Provisions, Part 3, Classification, and Sections 63A-12-105, 63A-12-107, 63G-2-201, 63G-2-202, 63G-2-205, 63G-2-206, 63G-2-601, and 63G-2-602.

(e) Every ordinance, policy, or amendment to the ordinance or policy shall be filed with the state archives no later than 30 days after its effective date.

(f) The political subdivision shall also report to the state archives all retention schedules, and all designations and classifications applied to record series maintained by the political subdivision.

(g) The report required by Subsection (2)(f) is notification to state archives of the political subdivision's retention schedules, designations, and classifications. The report is not subject to approval by state archives. If state archives determines that a different retention schedule is needed for state purposes, state archives shall notify the political subdivision of the state's retention schedule for the records and shall maintain the records if requested to do so under Subsection 63A-12-105(2).

- 1389 (3) Each ordinance or policy relating to information practices shall:
- 1390 (a) provide standards for the classification and designation of the records of the political
- 1391 subdivision as public, private, controlled, or protected in accordance with Part 3,
- 1392 Classification;
- 1393 (b) require the classification of the records of the political subdivision in accordance
- 1394 with those standards;
- 1395 (c) provide guidelines for establishment of fees in accordance with Section 63G-2-203;
- 1396 and
- 1397 (d) provide standards for the management and retention of the records of the political
- 1398 subdivision comparable to Section 63A-12-103.
- 1399 (4)(a) Each ordinance or policy shall establish access criteria, procedures, and response
- 1400 times for requests to inspect, obtain, or amend records of the political subdivision,
- 1401 and time limits for appeals consistent with this chapter.
- 1402 (b) In establishing response times for access requests and time limits for appeals, the
- 1403 political subdivision may establish reasonable time frames different than those set out
- 1404 in Section 63G-2-204 and Part 4, Appeals, if it determines that the resources of the
- 1405 political subdivision are insufficient to meet the requirements of those sections.
- 1406 (5)(a) A political subdivision shall establish an appeals process for persons aggrieved by
- 1407 classification, designation, or access decisions.
- 1408 (b) A political subdivision's appeals process shall include a process for a requester or
- 1409 interested party to appeal an access denial to a person designated by the political
- 1410 subdivision as the chief administrative officer for purposes of an appeal under
- 1411 Section 63G-2-401.
- 1412 (c)(i) A political subdivision may establish an appeals board to decide an appeal of a
- 1413 decision of the chief administrative officer affirming an access denial.
- 1414 (ii) An appeals board established by a political subdivision shall be composed of
- 1415 three members:
- 1416 (A) one of whom shall be an employee of the political subdivision; and
- 1417 (B) two of whom shall be members of the public who are not employed by or
- 1418 officials of a governmental entity, at least one of whom shall have professional
- 1419 experience with requesting or managing records.
- 1420 (iii) If a political subdivision establishes an appeals board, any appeal of a decision of
- 1421 a chief administrative officer shall be made to the appeals board.
- 1422 (iv) If a political subdivision does not establish an appeals board, the political

1423 subdivision's appeals process shall provide for an appeal of a chief administrative
1424 officer's decision to the ~~[State Records Committee]~~ director of the Government
1425 Records Office, as provided in Section 63G-2-403.

1426 (6)(a) A political subdivision or requester may appeal an appeals board decision:

1427 (i) to the ~~[State Records Committee]~~ director of the Government Records Office, as
1428 provided in Section 63G-2-403; or

1429 (ii) by filing a petition for judicial review with the district court.

1430 (b) The contents of a petition for judicial review under Subsection (6)(a)(ii) and the
1431 conduct of the proceeding shall be in accordance with Sections 63G-2-402 and
1432 63G-2-404.

1433 (c) A person who appeals an appeals board decision to the ~~[State Records Committee]~~
1434 director of the Government Records Office does not lose or waive the right to seek
1435 judicial review of the decision of the ~~[State Records Committee]~~ director of the
1436 Government Records Office.

1437 (7) Any political subdivision that adopts an ordinance or policy under Subsection (1) shall
1438 forward to state archives a copy and summary description of the ordinance or policy.

1439 Section 20. Section **63G-2-702** is amended to read:

1440 **63G-2-702 . Applicability to the judiciary.**

1441 (1) The judiciary is subject to the provisions of this chapter except as provided in this
1442 section.

1443 (2)(a) The judiciary is not subject to:

1444 (i) Section 63G-2-209; or

1445 (ii) Part 4, Appeals, except as provided in Subsection (6).

1446 (b) The judiciary is not subject to ~~[Part 5, State Records Committee, and]~~ Title 63A,
1447 Chapter 12, Part 2, Government Records Office, or Part 6, Collection of Information
1448 and Accuracy of Records.

1449 (c) The judiciary is subject to only the following sections in Part 9, Public Associations:
1450 Sections 63A-12-105 and 63A-12-106.

1451 (3) The Judicial Council, the Administrative Office of the Courts, the courts, and other
1452 administrative units in the judicial branch shall designate and classify their records in
1453 accordance with Sections 63G-2-301 through 63G-2-305.

1454 (4) Substantially consistent with the provisions of this chapter, the Judicial Council shall:

1455 (a) make rules governing requests for access, fees, classification, designation,
1456 segregation, management, retention, denials and appeals of requests for access and

- 1457 retention, and amendment of judicial records;
- 1458 (b) establish an appellate board to handle appeals from denials of requests for access and
- 1459 provide that a requester who is denied access by the appellate board may file a
- 1460 lawsuit in district court; and
- 1461 (c) provide standards for the management and retention of judicial records substantially
- 1462 consistent with Section 63A-12-103.
- 1463 (5) The Judicial Council may:
- 1464 (a) establish a process for an administrative unit of the judicial branch to petition for
- 1465 relief from a person that the administrative unit claims is a vexatious requester; and
- 1466 (b) establish an appellate board to hear a petition for relief from a person that an
- 1467 administrative unit of the judicial branch claims is a vexatious requester.
- 1468 (6) Rules governing appeals from denials of requests for access shall substantially comply
- 1469 with the time limits provided in Section 63G-2-204 and Part 4, Appeals.
- 1470 (7) Upon request, the state archivist shall:
- 1471 (a) assist with and advise concerning the establishment of a records management
- 1472 program in the judicial branch; and
- 1473 (b) as required by the judiciary, provide program services similar to those available to
- 1474 the executive and legislative branches of government as provided in this chapter and
- 1475 Title 63A, Chapter 12, Division of Archives and Records Service and Management
- 1476 of Government Records.
- 1477 Section 21. Section **63G-2-703** is amended to read:
- 1478 **63G-2-703 . Applicability to the Legislature.**
- 1479 (1) The Legislature and its staff offices shall designate and classify records in accordance
- 1480 with Sections 63G-2-301 through 63G-2-305 as public, private, controlled, or protected.
- 1481 (2)(a) The Legislature and its staff offices are not subject to:
- 1482 (i) Section 63G-2-203 or 63G-2-209; or
- 1483 (ii) Part 4, Appeals, [~~Part 5, State Records Committee~~] Title 63A, Chapter 12, Part 2,
- 1484 Government Records Office, or Part 6, Collection of Information and Accuracy of
- 1485 Records.
- 1486 (b) The Legislature is subject to only the following sections in Title 63A, Chapter 12,
- 1487 Division of Archives and Records Service and Management of Government Records:[
- 1488 Sections-]
- 1489 (i) Section 63A-12-102[-] ;
- 1490 (ii) Section 63A-12-102.5[-] ; and[-]

- 1491 (iii) Section 63A-12-106.
- 1492 (3) The Legislature, through the Legislative Management Committee:
- 1493 (a)(i) shall establish policies to handle requests for classification, designation, fees,
- 1494 access, denials, segregation, appeals, management, retention, and amendment of
- 1495 records; and
- 1496 (ii) may establish an appellate board to hear appeals from denials of access; and
- 1497 (b) may establish:
- 1498 (i) a process for determining that a person is a vexatious requester, including a
- 1499 process for an appeal from a determination that a person is a vexatious requester;
- 1500 and
- 1501 (ii) appropriate limitations on a person determined to be a vexatious requester.
- 1502 (4) Policies shall include reasonable times for responding to access requests consistent with
- 1503 the provisions of Part 2, Access to Records, fees, and reasonable time limits for appeals.
- 1504 (5) Upon request, the state archivist shall:
- 1505 (a) assist with and advise concerning the establishment of a records management
- 1506 program in the Legislature; and
- 1507 (b) as required by the Legislature, provide program services similar to those available to
- 1508 the executive branch of government, as provided in this chapter and Title 63A,
- 1509 Chapter 12, Division of Archives and Records Service and Management of
- 1510 Government Records.
- 1511 Section 22. Section **63G-2-704** is amended to read:
- 1512 **63G-2-704 . Applicability to the governor and lieutenant governor.**
- 1513 (1) The governor, the office of the governor, the lieutenant governor, and the office of the
- 1514 lieutenant governor shall designate and classify records in accordance with Sections
- 1515 63G-2-301 through 63G-2-305 as public, private, controlled, or protected.
- 1516 (2)(a) The governor, the office of the governor, the lieutenant governor, and the office of
- 1517 the lieutenant governor are not subject to:
- 1518 (i) Section 63G-2-203;
- 1519 (ii) Section 63G-2-209;
- 1520 (iii) Section 63G-2-401; or
- 1521 (iv) Part 6, Collection of Information and Accuracy of Records.
- 1522 (b) The governor, the office of the governor, the lieutenant governor, and the office of
- 1523 the lieutenant governor are subject to only the following sections in Title 63A,
- 1524 Chapter 12, Division of Archives and Records Service and Management of

- 1525 Government Records:
- 1526 (i) Section 63A-12-102; and
- 1527 (ii) Section 63A-12-106.
- 1528 (3) The governor and lieutenant governor:
- 1529 (a)(i) shall establish policies to handle requests for classification, designation, fees,
- 1530 access, denials, segregation, appeals to the chief administrative officer,
- 1531 management, retention, and amendment of records; and
- 1532 (ii) may establish an appellate board to hear appeals from denials of access; and
- 1533 (b) may establish:
- 1534 (i) a process for determining that a person is a vexatious requester, including a
- 1535 process for an appeal from a determination that a person is a vexatious requester;
- 1536 and
- 1537 (ii) appropriate limitations on a person determined to be a vexatious requester.
- 1538 (4) Policies described in Subsection (3) shall include reasonable times for responding to
- 1539 access requests consistent with the provisions of Part 2, Access to Records, fees, and
- 1540 reasonable time limits for appeals.
- 1541 (5) Upon request, the state archivist shall:
- 1542 (a) assist with and advise concerning the establishment of a records management
- 1543 program for the governor, the office of the governor, the lieutenant governor, and the
- 1544 office of the lieutenant governor; and
- 1545 (b) as required by the governor or lieutenant governor, provide program services as
- 1546 provided in this chapter and Title 63A, Chapter 12, Division of Archives and Records
- 1547 Service and Management of Government Records.
- 1548 (6) An individual in an executive branch management position, as defined in Section
- 1549 67-1-1.5:
- 1550 (a) is not subject to Part 6, Collection of Information and Accuracy of Records; and
- 1551 (b) is subject to a policy for record amendment or retention created by the governor
- 1552 under Subsection (3)(a).
- 1553 Section 23. Section **63G-2-801** is amended to read:
- 1554 **63G-2-801 . Criminal penalties.**
- 1555 (1)(a) A public employee or other person who has lawful access to any private,
- 1556 controlled, or protected record under this chapter, and who intentionally discloses,
- 1557 provides a copy of, or improperly uses a private, controlled, or protected record
- 1558 knowing that the disclosure or use is prohibited under this chapter, is, except as

provided in Subsection 53-5-708(1)(c), guilty of a class B misdemeanor.

(b) It is a defense to prosecution under Subsection (1)(a) that the actor used or released private, controlled, or protected information in the reasonable belief that the use or disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office, or misappropriation of public funds or property.

(c) It is a defense to prosecution under Subsection (1)(a) that the record could have lawfully been released to the recipient if it had been properly classified.

(d) It is a defense to prosecution under Subsection (1)(a) that the public employee or other person disclosed, provided, or used the record based on a good faith belief that the disclosure, provision, or use was in accordance with the law.

(2)(a) A person who by false pretenses, bribery, or theft, gains access to or obtains a copy of any private, controlled, or protected record to which the person is not legally entitled is guilty of a class B misdemeanor.

(b) No person shall be guilty under Subsection (2)(a) who receives the record, information, or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery, or theft.

(3)(a) A public employee who intentionally refuses to release a record, the disclosure of which the employee knows is required by law, is guilty of a class B misdemeanor.

(b) It is a defense to prosecution under Subsection (3)(a) that the public employee's failure to release the record was based on a good faith belief that the public employee was acting in accordance with the requirements of law.

(c) A public employee who intentionally refuses to release a record, the disclosure of which the employee knows is required by a final unappealed order from a government entity, the ~~[State Records Committee]~~ director of the Government Records Office, or a court is guilty of a class B misdemeanor.

Section 24. Section **63H-1-202** is amended to read:

63H-1-202 . Applicability of other law.

(1) As used in this section:

(a) "Subsidiary" means an authority subsidiary that is a public body as defined in Section 52-4-103.

(b) "Subsidiary board" means the governing body of a subsidiary.

(2) The authority or land within a project area is not subject to:

(a) Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act;

- 1593 (b) Title 17, Chapter 27a, County Land Use, Development, and Management Act;
1594 (c) ordinances or regulations of a county or municipality, including those relating to land
1595 use, health, business license, or franchise; or
1596 (d) the jurisdiction of a special district under Title 17B, Limited Purpose Local
1597 Government Entities - Special Districts, or a special service district under Title 17D,
1598 Chapter 1, Special Service District Act.
- 1599 (3) The authority is subject to and governed by Sections 63E-2-106, 63E-2-107, 63E-2-108,
1600 63E-2-109, 63E-2-110, and 63E-2-111, but is not otherwise subject to or governed by
1601 Title 63E, Independent Entities Code.
- 1602 (4)(a) The definitions in Section 57-8-3 apply to this Subsection (4).
- 1603 (b) Notwithstanding the provisions of Title 57, Chapter 8, Condominium Ownership
1604 Act, or any other provision of law:
- 1605 (i) if the military is the owner of land in a project area on which a condominium
1606 project is constructed, the military is not required to sign, execute, or record a
1607 declaration of a condominium project; and
- 1608 (ii) if a condominium unit in a project area is owned by the military or owned by the
1609 authority and leased to the military for \$1 or less per calendar year, not including
1610 any common charges that are reimbursements for actual expenses:
- 1611 (A) the condominium unit is not subject to any liens under Title 57, Chapter 8,
1612 Condominium Ownership Act;
- 1613 (B) condominium unit owners within the same building or commercial
1614 condominium project may agree on any method of allocation and payment of
1615 common area expenses, regardless of the size or par value of each unit; and
- 1616 (C) the condominium project may not be dissolved without the consent of all the
1617 condominium unit owners.
- 1618 (5) Notwithstanding any other provision, when a law requires the consent of a local
1619 government, the authority is the consenting entity for a project area.
- 1620 (6)(a) A department, division, or other agency of the state and a political subdivision of
1621 the state shall cooperate with the authority to the fullest extent possible to provide
1622 whatever support, information, or other assistance the authority requests that is
1623 reasonably necessary to help the authority fulfill the authority's duties and
1624 responsibilities under this chapter.
- 1625 (b) Subsection (6)(a) does not apply to a political subdivision that does not have any of a
1626 project area located within the boundary of the political subdivision.

- 1627 (7)(a) The authority and a subsidiary are subject to Title 52, Chapter 4, Open and Public
1628 Meetings Act, except that:
- 1629 (i) notwithstanding Section 52-4-104, the timing and nature of training to authority
1630 board members or subsidiary board members on the requirements of Title 52,
1631 Chapter 4, Open and Public Meetings Act, may be determined by:
- 1632 (A) the board chair, for the authority board; or
1633 (B) the subsidiary board chair, for a subsidiary board;
- 1634 (ii) authority staff may adopt a rule governing the use of electronic meetings under
1635 Section 52-4-207, if, under Subsection 63H-1-301(3), the board delegates to
1636 authority staff the power to adopt the rule; and
- 1637 (iii) for an electronic meeting of the authority board or subsidiary board that
1638 otherwise complies with Section 52-4-207, the authority board or subsidiary
1639 board, respectively:
- 1640 (A) is not required to establish an anchor location; and
1641 (B) may convene and conduct the meeting without the determination otherwise
1642 required under Subsection 52-4-207(5)(a)(i).
- 1643 (b) The authority and subsidiaries are not required to physically post notice
1644 notwithstanding any other provision of law.
- 1645 (8) The authority and a subsidiary are subject to Title 63G, Chapter 2, Government Records
1646 Access and Management Act, except that:
- 1647 (a) notwithstanding Section 63G-2-701:
- 1648 (i) the authority may establish an appeals board consisting of at least three members;
1649 (ii) an appeals board established under Subsection (8)(a)(i) shall include:
- 1650 (A) one of the authority board members appointed by the governor;
1651 (B) the authority board member appointed by the president of the Senate; and
1652 (C) the authority board member appointed by the speaker of the House of
1653 Representatives; and
- 1654 (iii) an appeal of a decision of an appeals board is to district court, as provided in
1655 Section 63G-2-404, except that the ~~[State Records Committee is not a party]~~
1656 Government Records Office and the director of the Government Records Office
1657 are not parties; and
- 1658 (b) a record created or retained by the authority or a subsidiary acting in the role of a
1659 facilitator under Subsection 63H-1-201(3)(v) is a protected record under Title 63G,
1660 Chapter 2, Government Records Access and Management Act.

- 1661 (9) The authority or a subsidiary acting in the role of a facilitator under Subsection
1662 63H-1-201(3)(v) is not prohibited from receiving a benefit from a public-private
1663 partnership that results from the facilitator's work as a facilitator.
- 1664 (10)(a)(i) A subsidiary created as a public infrastructure district under Title 17D,
1665 Chapter 4, Public Infrastructure District Act, may, subject to limitations of Title
1666 17D, Chapter 4, Public Infrastructure District Act, levy a property tax for the
1667 operations and maintenance of the public infrastructure district's financed
1668 infrastructure and related improvements, subject to a maximum rate of .015.
- 1669 (ii) A levy under Subsection (10)(a)(i) may be separate from a public infrastructure
1670 district property tax levy for a bond.
- 1671 (b) If a subsidiary created as a public infrastructure district issues a bond:
- 1672 (i) the subsidiary may:
- 1673 (A) delay the effective date of the property tax levy for the bond until after the
1674 period of capitalized interest payments; and
- 1675 (B) covenant with bondholders not to reduce or impair the property tax levy; and
- 1676 (ii) notwithstanding a provision to the contrary in Title 17D, Chapter 4, Public
1677 Infrastructure District Act, the tax rate for the property tax levy for the bond may
1678 not exceed a rate that generates more revenue than required to pay the annual debt
1679 service of the bond plus administrative costs, subject to a maximum of .02.
- 1680 (c)(i) A subsidiary created as a public infrastructure district under Title 17D, Chapter
1681 4, Public Infrastructure District Act, may create tax areas, as defined in Section
1682 59-2-102, within the public infrastructure district and apply a different property
1683 tax rate to each tax area, subject to the maximum rate limitations described in
1684 Subsections (10)(a)(i) and (10)(b)(ii).
- 1685 (ii) If a subsidiary created by a public infrastructure district issues bonds, the
1686 subsidiary may issue bonds secured by property taxes from:
- 1687 (A) the entire public infrastructure district; or
- 1688 (B) one or more tax areas within the public infrastructure district.
- 1689 (11)(a) Terms defined in Section 57-11-2 apply to this Subsection (11).
- 1690 (b) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act, does not apply to an
1691 offer or disposition of an interest in land if the interest in land lies within the
1692 boundaries of the project area and the authority:
- 1693 (i)(A) has a development review committee using at least one professional planner;
- 1694 (B) enacts standards and guidelines that require approval of planning, land use,

1695 and plats, including the approval of plans for streets, culinary water, sanitary
1696 sewer, and flood control; and

1697 (C) will have the improvements described in Subsection (11)(b)(i)(B) plus
1698 telecommunications and electricity; and

1699 (ii) if at the time of the offer or disposition, the subdivider furnishes satisfactory
1700 assurance of completion of the improvements described in Subsection
1701 (11)(b)(i)(C).

1702 (12)(a) As used in this Subsection (12), "officer" means the same as an officer within the
1703 meaning of the Utah Constitution, Article IV, Section 10.

1704 (b) An official act of an officer may not be invalidated for the reason that the officer
1705 failed to take the oath of office.

1706 Section 25. Section **67-3-1** is amended to read:

1707 **67-3-1 . Functions and duties.**

1708 (1)(a) The state auditor is the auditor of public accounts and is independent of any
1709 executive or administrative officers of the state.

1710 (b) The state auditor is not limited in the selection of personnel or in the determination
1711 of the reasonable and necessary expenses of the state auditor's office.

1712 (2) The state auditor shall examine and certify annually in respect to each fiscal year,
1713 financial statements showing:

1714 (a) the condition of the state's finances;

1715 (b) the revenues received or accrued;

1716 (c) expenditures paid or accrued;

1717 (d) the amount of unexpended or unencumbered balances of the appropriations to the
1718 agencies, departments, divisions, commissions, and institutions; and

1719 (e) the cash balances of the funds in the custody of the state treasurer.

1720 (3)(a) The state auditor shall:

1721 (i) audit each permanent fund, each special fund, the General Fund, and the accounts
1722 of any department of state government or any independent agency or public
1723 corporation as the law requires, as the auditor determines is necessary, or upon
1724 request of the governor or the Legislature;

1725 (ii) perform the audits in accordance with generally accepted auditing standards and
1726 other auditing procedures as promulgated by recognized authoritative bodies; and

1727 (iii) as the auditor determines is necessary, conduct the audits to determine:

1728 (A) honesty and integrity in fiscal affairs;

- 1729 (B) accuracy and reliability of financial statements;
1730 (C) effectiveness and adequacy of financial controls; and
1731 (D) compliance with the law.
- 1732 (b) If any state entity receives federal funding, the state auditor shall ensure that the
1733 audit is performed in accordance with federal audit requirements.
- 1734 (c)(i) The costs of the federal compliance portion of the audit may be paid from an
1735 appropriation to the state auditor from the General Fund.
- 1736 (ii) If an appropriation is not provided, or if the federal government does not
1737 specifically provide for payment of audit costs, the costs of the federal compliance
1738 portions of the audit shall be allocated on the basis of the percentage that each
1739 state entity's federal funding bears to the total federal funds received by the state.
- 1740 (iii) The allocation shall be adjusted to reflect any reduced audit time required to
1741 audit funds passed through the state to local governments and to reflect any
1742 reduction in audit time obtained through the use of internal auditors working
1743 under the direction of the state auditor.
- 1744 (4)(a) Except as provided in Subsection (4)(b), the state auditor shall, in addition to
1745 financial audits, and as the auditor determines is necessary, conduct performance and
1746 special purpose audits, examinations, and reviews of any entity that receives public
1747 funds, including a determination of any or all of the following:
- 1748 (i) the honesty and integrity of all the entity's fiscal affairs;
1749 (ii) whether the entity's administrators have faithfully complied with legislative intent;
1750 (iii) whether the entity's operations have been conducted in an efficient, effective, and
1751 cost-efficient manner;
1752 (iv) whether the entity's programs have been effective in accomplishing the intended
1753 objectives; and
1754 (v) whether the entity's management, control, and information systems are adequate,
1755 effective, and secure.
- 1756 (b) The auditor may not conduct performance and special purpose audits, examinations,
1757 and reviews of any entity that receives public funds if the entity:
- 1758 (i) has an elected auditor; and
1759 (ii) has, within the entity's last budget year, had the entity's financial statements or
1760 performance formally reviewed by another outside auditor.
- 1761 (5) The state auditor:
- 1762 (a) shall administer any oath or affirmation necessary to the performance of the duties of

- 1763 the auditor's office; and
- 1764 (b) may:
- 1765 (i) subpoena witnesses and documents, whether electronic or otherwise; and
- 1766 (ii) examine into any matter that the auditor considers necessary.
- 1767 (6) The state auditor may require all persons who have had the disposition or management
- 1768 of any property of this state or its political subdivisions to submit statements regarding
- 1769 the property at the time and in the form that the auditor requires.
- 1770 (7) The state auditor shall:
- 1771 (a) except where otherwise provided by law, institute suits in Salt Lake County in
- 1772 relation to the assessment, collection, and payment of revenues against:
- 1773 (i) persons who by any means have become entrusted with public money or property
- 1774 and have failed to pay over or deliver the money or property; and
- 1775 (ii) all debtors of the state;
- 1776 (b) collect and pay into the state treasury all fees received by the state auditor;
- 1777 (c) perform the duties of a member of all boards of which the state auditor is a member
- 1778 by the constitution or laws of the state, and any other duties that are prescribed by the
- 1779 constitution and by law;
- 1780 (d) stop the payment of the salary of any state official or state employee who:
- 1781 (i) refuses to settle accounts or provide required statements about the custody and
- 1782 disposition of public funds or other state property;
- 1783 (ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling
- 1784 board or department head with respect to the manner of keeping prescribed
- 1785 accounts or funds; or
- 1786 (iii) fails to correct any delinquencies, improper procedures, and errors brought to the
- 1787 official's or employee's attention;
- 1788 (e) establish accounting systems, methods, and forms for public accounts in all taxing or
- 1789 fee-assessing units of the state in the interest of uniformity, efficiency, and economy;
- 1790 (f) superintend the contractual auditing of all state accounts;
- 1791 (g) subject to Subsection (8)(a), withhold state allocated funds or the disbursement of
- 1792 property taxes from a state or local taxing or fee-assessing unit, if necessary, to
- 1793 ensure that officials and employees in those taxing units comply with state laws and
- 1794 procedures in the budgeting, expenditures, and financial reporting of public funds;
- 1795 (h) subject to Subsection (9), withhold the disbursement of tax money from any county,
- 1796 if necessary, to ensure that officials and employees in the county comply with

- 1797 Section 59-2-303.1; and
- 1798 (i) withhold state allocated funds or the disbursement of property taxes from a local
1799 government entity or a limited purpose entity, as those terms are defined in Section
1800 67-1a-15 if the state auditor finds the withholding necessary to ensure that the entity
1801 registers and maintains the entity's registration with the lieutenant governor, in
1802 accordance with Section 67-1a-15.
- 1803 (8)(a) Except as otherwise provided by law, the state auditor may not withhold funds
1804 under Subsection (7)(g) until a state or local taxing or fee-assessing unit has received
1805 formal written notice of noncompliance from the auditor and has been given 60 days
1806 to make the specified corrections.
- 1807 (b) If, after receiving notice under Subsection (8)(a), a state or independent local
1808 fee-assessing unit that exclusively assesses fees has not made corrections to comply
1809 with state laws and procedures in the budgeting, expenditures, and financial reporting
1810 of public funds, the state auditor:
- 1811 (i) shall provide a recommended timeline for corrective actions;
- 1812 (ii) may prohibit the state or local fee-assessing unit from accessing money held by
1813 the state; and
- 1814 (iii) may prohibit a state or local fee-assessing unit from accessing money held in an
1815 account of a financial institution by filing an action in a court with jurisdiction
1816 under Title 78A, Judiciary and Judicial Administration, requesting an order of the
1817 court to prohibit a financial institution from providing the fee-assessing unit
1818 access to an account.
- 1819 (c) The state auditor shall remove a limitation on accessing funds under Subsection
1820 (8)(b) upon compliance with state laws and procedures in the budgeting,
1821 expenditures, and financial reporting of public funds.
- 1822 (d) If a local taxing or fee-assessing unit has not adopted a budget in compliance with
1823 state law, the state auditor:
- 1824 (i) shall provide notice to the taxing or fee-assessing unit of the unit's failure to
1825 comply;
- 1826 (ii) may prohibit the taxing or fee-assessing unit from accessing money held by the
1827 state; and
- 1828 (iii) may prohibit a taxing or fee-assessing unit from accessing money held in an
1829 account of a financial institution by:
- 1830 (A) contacting the taxing or fee-assessing unit's financial institution and

- 1831 requesting that the institution prohibit access to the account; or
- 1832 (B) filing an action in a court with jurisdiction under Title 78A, Judiciary and
- 1833 Judicial Administration, requesting an order of the court to prohibit a financial
- 1834 institution from providing the taxing or fee-assessing unit access to an account.
- 1835 (e) If the local taxing or fee-assessing unit adopts a budget in compliance with state law,
- 1836 the state auditor shall eliminate a limitation on accessing funds described in
- 1837 Subsection (8)(d).
- 1838 (9) The state auditor may not withhold funds under Subsection (7)(h) until a county has
- 1839 received formal written notice of noncompliance from the auditor and has been given 60
- 1840 days to make the specified corrections.
- 1841 (10)(a) The state auditor may not withhold funds under Subsection (7)(i) until the state
- 1842 auditor receives a notice of non-registration, as that term is defined in Section
- 1843 67-1a-15.
- 1844 (b) If the state auditor receives a notice of non-registration, the state auditor may
- 1845 prohibit the local government entity or limited purpose entity, as those terms are
- 1846 defined in Section 67-1a-15, from accessing:
- 1847 (i) money held by the state; and
- 1848 (ii) money held in an account of a financial institution by:
- 1849 (A) contacting the entity's financial institution and requesting that the institution
- 1850 prohibit access to the account; or
- 1851 (B) filing an action in a court with jurisdiction under Title 78A, Judiciary and
- 1852 Judicial Administration, requesting an order of the court to prohibit a financial
- 1853 institution from providing the entity access to an account.
- 1854 (c) The state auditor shall remove the prohibition on accessing funds described in
- 1855 Subsection (10)(b) if the state auditor received a notice of registration, as that term is
- 1856 defined in Section 67-1a-15, from the lieutenant governor.
- 1857 (11) Notwithstanding Subsection (7)(g), (7)(h), (7)(i), (8)(b), (8)(d), or (10)(b), the state
- 1858 auditor:
- 1859 (a) shall authorize a disbursement by a local government entity or limited purpose entity,
- 1860 as those terms are defined in Section 67-1a-15, or a state or local taxing or
- 1861 fee-assessing unit if the disbursement is necessary to:
- 1862 (i) avoid a major disruption in the operations of the local government entity, limited
- 1863 purpose entity, or state or local taxing or fee-assessing unit; or
- 1864 (ii) meet debt service obligations; and

- 1865 (b) may authorize a disbursement by a local government entity, limited purpose entity,
1866 or state or local taxing or fee-assessing unit as the state auditor determines is
1867 appropriate.
- 1868 (12)(a) The state auditor may seek relief under the Utah Rules of Civil Procedure to take
1869 temporary custody of public funds if an action is necessary to protect public funds
1870 from being improperly diverted from their intended public purpose.
- 1871 (b) If the state auditor seeks relief under Subsection (12)(a):
- 1872 (i) the state auditor is not required to exhaust the procedures in Subsection (7) or (8);
1873 and
- 1874 (ii) the state treasurer may hold the public funds in accordance with Section 67-4-1 if
1875 a court orders the public funds to be protected from improper diversion from their
1876 public purpose.
- 1877 (13) The state auditor shall:
- 1878 (a) establish audit guidelines and procedures for audits of local mental health and
1879 substance abuse authorities and their contract providers, conducted pursuant to Title
1880 17, Chapter 43, Part 2, Local Substance Abuse Authorities, Title 17, Chapter 43, Part
1881 3, Local Mental Health Authorities, Title 26B, Chapter 5, Health Care - Substance
1882 Use and Mental Health, and Title 51, Chapter 2a, Accounting Reports from Political
1883 Subdivisions, Interlocal Organizations, and Other Local Entities Act; and
- 1884 (b) ensure that those guidelines and procedures provide assurances to the state that:
- 1885 (i) state and federal funds appropriated to local mental health authorities are used for
1886 mental health purposes;
- 1887 (ii) a private provider under an annual or otherwise ongoing contract to provide
1888 comprehensive mental health programs or services for a local mental health
1889 authority is in compliance with state and local contract requirements and state and
1890 federal law;
- 1891 (iii) state and federal funds appropriated to local substance abuse authorities are used
1892 for substance abuse programs and services; and
- 1893 (iv) a private provider under an annual or otherwise ongoing contract to provide
1894 comprehensive substance abuse programs or services for a local substance abuse
1895 authority is in compliance with state and local contract requirements, and state and
1896 federal law.
- 1897 (14)(a) The state auditor may, in accordance with the auditor's responsibilities for
1898 political subdivisions of the state as provided in Title 51, Chapter 2a, Accounting

1899 Reports from Political Subdivisions, Interlocal Organizations, and Other Local
1900 Entities Act, initiate audits or investigations of any political subdivision that are
1901 necessary to determine honesty and integrity in fiscal affairs, accuracy and reliability
1902 of financial statements, effectiveness, and adequacy of financial controls and
1903 compliance with the law.

1904 (b) If the state auditor receives notice under Subsection 11-41-104(7) from the
1905 Governor's Office of Economic Opportunity on or after July 1, 2024, the state auditor
1906 may initiate an audit or investigation of the public entity subject to the notice to
1907 determine compliance with Section 11-41-103.

1908 (15)(a) The state auditor may not audit work that the state auditor performed before
1909 becoming state auditor.

1910 (b) If the state auditor has previously been a responsible official in state government
1911 whose work has not yet been audited, the Legislature shall:
1912 (i) designate how that work shall be audited; and
1913 (ii) provide additional funding for those audits, if necessary.

1914 (16) The state auditor shall:
1915 (a) with the assistance, advice, and recommendations of an advisory committee
1916 appointed by the state auditor from among special district boards of trustees, officers,
1917 and employees and special service district boards, officers, and employees:
1918 (i) prepare a Uniform Accounting Manual for Special Districts that:
1919 (A) prescribes a uniform system of accounting and uniform budgeting and
1920 reporting procedures for special districts under Title 17B, Limited Purpose
1921 Local Government Entities - Special Districts, and special service districts
1922 under Title 17D, Chapter 1, Special Service District Act;
1923 (B) conforms with generally accepted accounting principles; and
1924 (C) prescribes reasonable exceptions and modifications for smaller districts to the
1925 uniform system of accounting, budgeting, and reporting;
1926 (ii) maintain the manual under this Subsection (16)(a) so that the manual continues to
1927 reflect generally accepted accounting principles;
1928 (iii) conduct a continuing review and modification of procedures in order to improve
1929 them;
1930 (iv) prepare and supply each district with suitable budget and reporting forms; and
1931 (v)(A) prepare instructional materials, conduct training programs, and render other
1932 services considered necessary to assist special districts and special service

1933 districts in implementing the uniform accounting, budgeting, and reporting
1934 procedures; and
1935 (B) ensure that any training described in Subsection (16)(a)(v)(A) complies with
1936 Title 63G, Chapter 22, State Training and Certification Requirements; and
1937 (b) continually analyze and evaluate the accounting, budgeting, and reporting practices
1938 and experiences of specific special districts and special service districts selected by
1939 the state auditor and make the information available to all districts.
1940 (17)(a) The following records in the custody or control of the state auditor are protected
1941 records under Title 63G, Chapter 2, Government Records Access and Management
1942 Act:
1943 (i) records that would disclose information relating to allegations of personal
1944 misconduct, gross mismanagement, or illegal activity of a past or present
1945 governmental employee if the information or allegation cannot be corroborated by
1946 the state auditor through other documents or evidence, and the records relating to
1947 the allegation are not relied upon by the state auditor in preparing a final audit
1948 report;
1949 (ii) records and audit workpapers to the extent the workpapers would disclose the
1950 identity of an individual who during the course of an audit, communicated the
1951 existence of any waste of public funds, property, or manpower, or a violation or
1952 suspected violation of a law, rule, or regulation adopted under the laws of this
1953 state, a political subdivision of the state, or any recognized entity of the United
1954 States, if the information was disclosed on the condition that the identity of the
1955 individual be protected;
1956 (iii) before an audit is completed and the final audit report is released, records or
1957 drafts circulated to an individual who is not an employee or head of a
1958 governmental entity for the individual's response or information;
1959 (iv) records that would disclose an outline or part of any audit survey plans or audit
1960 program; and
1961 (v) requests for audits, if disclosure would risk circumvention of an audit.
1962 (b) The provisions of Subsections (17)(a)(i), (ii), and (iii) do not prohibit the disclosure
1963 of records or information that relate to a violation of the law by a governmental entity
1964 or employee to a government prosecutor or peace officer.
1965 (c) The provisions of this Subsection (17) do not limit the authority otherwise given to
1966 the state auditor to classify a document as public, private, controlled, or protected

- 1967 under Title 63G, Chapter 2, Government Records Access and Management Act.
- 1968 (d)(i) As used in this Subsection (17)(d), "record dispute" means a dispute between
- 1969 the state auditor and the subject of an audit performed by the state auditor as to
- 1970 whether the state auditor may release a record, as defined in Section 63G-2-103,
- 1971 to the public that the state auditor gained access to in the course of the state
- 1972 auditor's audit but which the subject of the audit claims is not subject to disclosure
- 1973 under Title 63G, Chapter 2, Government Records Access and Management Act.
- 1974 (ii) The state auditor may submit a record dispute to the [~~State Records Committee,~~
- 1975 ~~created in Section 63G-2-501~~] director of the Government Records Office, created
- 1976 in Section 63A-12-202, for a determination of whether the state auditor may, in
- 1977 conjunction with the state auditor's release of an audit report, release to the public
- 1978 the record that is the subject of the record dispute.
- 1979 (iii) The state auditor or the subject of the audit may seek judicial review of [~~a State~~
- 1980 ~~Records Committee~~] the director's determination[~~under~~] , described in Subsection
- 1981 (17)(d)(ii), as provided in Section 63G-2-404.
- 1982 (18) If the state auditor conducts an audit of an entity that the state auditor has previously
- 1983 audited and finds that the entity has not implemented a recommendation made by the
- 1984 state auditor in a previous audit, the state auditor shall notify the Legislative
- 1985 Management Committee through the Legislative Management Committee's audit
- 1986 subcommittee that the entity has not implemented that recommendation.
- 1987 (19) The state auditor shall, with the advice and consent of the Senate, appoint the state
- 1988 privacy officer described in Section 67-3-13.
- 1989 (20) Except as provided in Subsection (21), the state auditor shall report, or ensure that
- 1990 another government entity reports, on the financial, operational, and performance
- 1991 metrics for the state system of higher education and the state system of public education,
- 1992 including metrics in relation to students, programs, and schools within those systems.
- 1993 (21)(a) Notwithstanding Subsection (20), the state auditor shall conduct regular audits of:
- 1994 (i) the scholarship granting organization for the Carson Smith Opportunity
- 1995 Scholarship Program, created in Section 53E-7-402;
- 1996 (ii) the State Board of Education for the Carson Smith Scholarship Program, created
- 1997 in Section 53F-4-302; and
- 1998 (iii) the scholarship program manager for the Utah Fits All Scholarship Program,
- 1999 created in Section 53F-6-402, including an analysis of the cost effectiveness of the
- 2000 program, taking into consideration the amount of the scholarship and the amount

2001 of state and local funds dedicated on a per-student basis within the traditional
2002 public education system.

2003 (b) Nothing in this subsection limits or impairs the authority of the State Board of
2004 Education to administer the programs described in Subsection (21)(a).

2005 (22) The state auditor shall, based on the information posted by the Office of Legislative
2006 Research and General Counsel under Subsection 36-12-12.1(2), for each policy, track
2007 and post the following information on the state auditor's website:

2008 (a) the information posted under Subsections 36-12-12.1(2)(a) through (e);
2009 (b) an indication regarding whether the policy is timely adopted, adopted late, or not
2010 adopted;
2011 (c) an indication regarding whether the policy complies with the requirements
2012 established by law for the policy; and
2013 (d) a link to the policy.

2014 (23)(a) A legislator may request that the state auditor conduct an inquiry to determine
2015 whether a government entity, government official, or government employee has
2016 complied with a legal obligation directly imposed, by statute, on the government
2017 entity, government official, or government employee.

2018 (b) The state auditor may, upon receiving a request under Subsection (23)(a), conduct
2019 the inquiry requested.

2020 (c) If the state auditor conducts the inquiry described in Subsection (23)(b), the state
2021 auditor shall post the results of the inquiry on the state auditor's website.

2022 (d) The state auditor may limit the inquiry described in this Subsection (23) to a simple
2023 determination, without conducting an audit, regarding whether the obligation was
2024 fulfilled.

2025 (24) The state auditor shall:

2026 (a) ensure compliance with Title 63G, Chapter 31, Distinctions on the Basis of Sex, in
2027 accordance with Section 63G-31-401; and
2028 (b) report to the Legislative Management Committee, upon request, regarding the state
2029 auditor's actions under this Subsection (24).

2030 (25) The state auditor shall report compliance with Sections 67-27-107, 67-27-108, and
2031 67-27-109 by:

2032 (a) establishing a process to receive and audit each alleged violation; and
2033 (b) reporting to the Legislative Management Committee, upon request, regarding the
2034 state auditor's findings and recommendations under this Subsection (25).

2035 Section 26. Section **77-18-103** is amended to read:

2036 **77-18-103 . Presentence investigation report -- Classification of presentence**
2037 **investigation report -- Evidence or other information at sentencing.**

2038 (1) Before the imposition of a sentence, the court may:

2039 (a) upon agreement of the defendant, continue the date for the imposition of the sentence
2040 for a reasonable period of time for the purpose of obtaining a presentence
2041 investigation report from the department or a law enforcement agency, or information
2042 from any other source about the defendant; and

2043 (b) if the defendant is convicted of a felony or a class A misdemeanor, request that the
2044 department or a law enforcement agency prepare a presentence investigation report
2045 for the defendant.

2046 (2)(a) Notwithstanding Subsection (1), if a defendant is convicted of a felony offense
2047 and the defendant is a habitual offender, the prosecuting attorney shall notify the
2048 court that the defendant is a habitual offender.

2049 (b) Upon a notification under Subsection (2)(a), the court may not impose a sentence for
2050 the conviction without ordering and obtaining a presentence investigation report,
2051 unless the court finds good cause to proceed with sentencing without the presentence
2052 investigation report.

2053 (3) If a presentence investigation report is required under Subsection (2) or the standards
2054 established by the department described in Section 77-18-109, the presentence
2055 investigation report under Subsection (1) shall include:

2056 (a) any impact statement provided by a victim as described in Subsection 77-38b-203
2057 (3)(c);

2058 (b) information on restitution as described in Subsections 77-38b-203(3)(a) and (b);

2059 (c) recommendations for treatment for the defendant; and

2060 (d) the number of days since the commission of the offense that the defendant has spent
2061 in the custody of the jail and the number of days, if any, the defendant was released
2062 to a supervised release program or an alternative incarceration program under Section
2063 17-22-5.5.

2064 (4) The department or law enforcement agency shall provide the presentence investigation
2065 report to the defendant's attorney, or the defendant if the defendant is not represented by
2066 counsel, the prosecuting attorney, and the court for review within three working days
2067 before the day on which the defendant is sentenced.

2068 (5)(a)(i) If there is an alleged inaccuracy in the presentence investigation report that

is not resolved by the parties and the department or law enforcement agency before sentencing:

(A) the alleged inaccuracy shall be brought to the attention of the court at sentencing; and

(B) the court may grant an additional 10 working days after the day on which the alleged inaccuracy is brought to the court's attention to allow the parties and the department to resolve the alleged inaccuracy in the presentence investigation report.

(ii) If the court does not grant additional time under Subsection (5)(a)(i)(B), or the alleged inaccuracy cannot be resolved after 10 working days, and if the court finds that there is an inaccuracy in the presentence investigation report, the court shall:

(A) enter a written finding as to the relevance and accuracy of the challenged portion of the presentence investigation report; and

(B) provide the written finding to the department or the law enforcement agency.

(b) The department shall attach the written finding to the presentence investigation report as an addendum.

(c) If a party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, the matter shall be considered waived.

(6) The contents of the presentence investigation report are protected and not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department or law enforcement agency.

(7)(a) A presentence investigation report is classified as protected in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

(b) Notwithstanding Sections 63G-2-403 and 63G-2-404, the ~~[State Records Committee]~~ director of the State Records Office, created in Section 63A-12-202, may not order the disclosure of a presentence investigation report.

(8) Except for disclosure at the time of sentencing in accordance with this section, the department or law enforcement agency may disclose a presentence investigation only when:

(a) ordered by the court in accordance with Subsection 63G-2-202(7);

(b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of a defendant;

(c) requested by the board;

(d) requested by the subject of the presentence investigation report or the subject's

- 2103 authorized representative;
- 2104 (e) requested by the victim of the offense discussed in the presentence investigation
- 2105 report, or the victim's authorized representative, if the disclosure is only information
- 2106 relating to:
- 2107 (i) statements or materials provided by the victim;
- 2108 (ii) the circumstances of the offense, including statements by the defendant; or
- 2109 (iii) the impact of the offense on the victim or the victim's household; or
- 2110 (f) requested by a sex offender treatment provider:
- 2111 (i) who is certified to provide treatment under the certification program established in
- 2112 Subsection 64-13-25(2);
- 2113 (ii) who is providing, at the time of the request, sex offender treatment to the offender
- 2114 who is the subject of the presentence investigation report; and
- 2115 (iii) who provides written assurance to the department that the report:
- 2116 (A) is necessary for the treatment of the defendant;
- 2117 (B) will be used solely for the treatment of the defendant; and
- 2118 (C) will not be disclosed to an individual or entity other than the defendant.
- 2119 (9)(a) At the time of sentence, the court shall receive any testimony, evidence, or
- 2120 information that the defendant or the prosecuting attorney desires to present
- 2121 concerning the appropriate sentence.
- 2122 (b) Testimony, evidence, or information under Subsection (9)(a) shall be presented in
- 2123 open court on record and in the presence of the defendant.
- 2124 (10) The court may not rely solely on an algorithm or a risk assessment tool score in
- 2125 determining the appropriate sentence for a defendant.
- 2126 Section 27. Section **77-27-5** is amended to read:
- 2127 **77-27-5 . Board of Pardons and Parole authority.**
- 2128 (1)
- 2130 (a) Subject to this chapter and other laws of the state, and except for a conviction for
- 2131 treason or impeachment, the board shall determine by majority decision when and
- 2132 under what conditions an offender's conviction may be pardoned or commuted.
- 2133 (b) The board shall determine by majority decision when and under what conditions an
- 2134 offender committed to serve a sentence at a penal or correctional facility, which is
- 2135 under the jurisdiction of the department, may:
- 2136 (i) be released upon parole;
- 2137 (ii) have a fine or forfeiture remitted;

- 2138 (iii) have the offender's criminal accounts receivable remitted in accordance with
2139 Section 77-32b-105 or 77-32b-106;
- 2140 (iv) have the offender's payment schedule modified in accordance with Section
2141 77-32b-103; or
- 2142 (v) have the offender's sentence terminated.
- 2143 (c) The board shall prioritize public safety when making a determination under
2144 Subsection (1)(a) or (1)(b).
- 2145 (d)(i) The board may sit together or in panels to conduct hearings.
- 2146 (ii) The chair shall appoint members to the panels in any combination and in
2147 accordance with rules made by the board in accordance with Title 63G, Chapter 3,
2148 Utah Administrative Rulemaking Act.
- 2149 (iii) The chair may participate on any panel and when doing so is chair of the panel.
- 2150 (iv) The chair of the board may designate the chair for any other panel.
- 2151 (e)(i) Except after a hearing before the board, or the board's appointed examiner, in
2152 an open session, the board may not:
- 2153 (A) remit a fine or forfeiture for an offender or the offender's criminal accounts
2154 receivable;
- 2155 (B) release the offender on parole; or
- 2156 (C) commute, pardon, or terminate an offender's sentence.
- 2157 (ii) An action taken under this Subsection (1) other than by a majority of the board
2158 shall be affirmed by a majority of the board.
- 2159 (f) A commutation or pardon may be granted only after a full hearing before the board.
- 2160 (2)(a) In the case of a hearing, timely prior notice of the time and location of the hearing
2161 shall be given to the offender.
- 2162 (b) The county or district attorney's office responsible for prosecution of the case, the
2163 sentencing court, and law enforcement officials responsible for the defendant's arrest
2164 and conviction shall be notified of any board hearings through the board's website.
- 2165 (c) Whenever possible, the victim or the victim's representative, if designated, shall be
2166 notified of original hearings and any hearing after that if notification is requested and
2167 current contact information has been provided to the board.
- 2168 (d)(i) Notice to the victim or the victim's representative shall include information
2169 provided in Section 77-27-9.5, and any related rules made by the board under that
2170 section.
- 2171 (ii) The information under Subsection (2)(d)(i) shall be provided in terms that are

- 2172 reasonable for the lay person to understand.
- 2173 (3)(a) A decision by the board is final and not subject for judicial review if the decision
2174 is regarding:
- 2175 (i) a pardon, parole, commutation, or termination of an offender's sentence;
 - 2176 (ii) the modification of an offender's payment schedule for restitution; or
 - 2177 (iii) the remission of an offender's criminal accounts receivable or a fine or forfeiture.
- 2178 (b) Deliberative processes are not public and the board is exempt from Title 52, Chapter
2179 4, Open and Public Meetings Act, when the board is engaged in the board's
2180 deliberative process.
- 2181 (c) Pursuant to Subsection [~~63G-2-103(25)(b)(xi)~~] 63G-2-103(26)(b)(xii), records of the
2182 deliberative process are exempt from Title 63G, Chapter 2, Government Records
2183 Access and Management Act.
- 2184 (d) Unless it will interfere with a constitutional right, deliberative processes are not
2185 subject to disclosure, including discovery.
- 2186 (e) Nothing in this section prevents the obtaining or enforcement of a civil judgment.
- 2187 (4)(a) This chapter may not be construed as a denial of or limitation of the governor's
2188 power to grant respite or reprieves in all cases of convictions for offenses against the
2189 state, except treason or conviction on impeachment.
- 2190 (b) Notwithstanding Subsection (4)(a), respites or reprieves may not extend beyond the
2191 next session of the board.
- 2192 (c) At the next session of the board, the board:
- 2193 (i) shall continue or terminate the respite or reprieve; or
 - 2194 (ii) may commute the punishment or pardon the offense as provided.
- 2195 (d) In the case of conviction for treason, the governor may suspend execution of the
2196 sentence until the case is reported to the Legislature at the Legislature's next session.
- 2197 (e) The Legislature shall pardon or commute the sentence or direct the sentence's
2198 execution.
- 2199 (5)(a) In determining when, where, and under what conditions an offender serving a
2200 sentence may be paroled or pardoned, have a fine or forfeiture remitted, have the
2201 offender's criminal accounts receivable remitted, or have the offender's sentence
2202 commuted or terminated, the board shall:
- 2203 (i) consider whether the offender has made restitution ordered by the court under
2204 Section 77-38b-205, or is prepared to pay restitution as a condition of any parole,
2205 pardon, remission of a criminal accounts receivable or a fine or forfeiture, or a

2206 commutation or termination of the offender's sentence;

2207 (ii) except as provided in Subsection (5)(b), develop and use a list of criteria for

2208 making determinations under this Subsection (5);

2209 (iii) consider information provided by the department regarding an offender's

2210 individual case action plan; and

2211 (iv) review an offender's status within 60 days after the day on which the board

2212 receives notice from the department that the offender has completed all of the

2213 offender's case action plan components that relate to activities that can be

2214 accomplished while the offender is imprisoned.

2215 (b) The board shall determine whether to remit an offender's criminal accounts

2216 receivable under this Subsection (5) in accordance with Section 77-32b-105 or

2217 77-32b-106.

2218 (6) In determining whether parole may be terminated, the board shall consider:

2219 (a) the offense committed by the parolee; and

2220 (b) the parole period under Section 76-3-202, and in accordance with Section 77-27-13.

2221 (7) For an offender placed on parole after December 31, 2018, the board shall terminate

2222 parole in accordance with the adult sentencing and supervision length guidelines, as

2223 defined in Section 63M-7-401.1, to the extent the guidelines are consistent with the

2224 requirements of the law.

2225 (8) The board may not rely solely on an algorithm or a risk assessment tool score in

2226 determining whether parole should be granted or terminated for an offender.

2227 (9) The board may intervene as a limited-purpose party in a judicial or administrative

2228 proceeding, including a criminal action, to seek:

2229 (a) correction of an order that has or will impact the board's jurisdiction; or

2230 (b) clarification regarding an order that may impact the board's jurisdiction.

2231 (10) A motion to intervene brought under Subsection (8)(a) shall be raised within 60 days

2232 after the day on which a court enters the order that impacts the board's jurisdiction.

2233 Section 28. **Repealer.**

2234 This bill repeals:

2235 Section **63G-2-101, Title.**

2236 Section **63G-2-501, State Records Committee created -- Membership -- Terms --**

2237 **Vacancies -- Expenses.**

2238 Section **63G-2-502, State Records Committee -- Duties.**

2239 Section 29. **Effective Date.**

2240 This bill takes effect on May 7, 2025.

2241 **Section 30. Coordinating S.B. 277 with S.B. 163.**

2242 If S.B. 277, Government Records Management Amendments, and S.B. 163,

2243 Government Records Amendments, both pass and become law, the Legislature intends that, on

2244 May 7, 2025:

2245 (1) Subsection 63A-12-203(1), enacted in S.B. 277, be amended to read:

2246 "(1) The director shall:

2247 (a) supervise and manage the office;

2248 (b) appoint and supervise a government records ombudsman to fulfill the duties

2249 described in Section 63A-12-204;

2250 (c) administer the records appeal process;

2251 (d) hear appeals regarding disputed fees under Section 63G-2-203;

2252 (e) hear and decide appeals from determinations of access under Section 63G-2-403;

2253 and

2254 (f) determine disputes submitted by the state auditor under Subsection

2255 67-3-1(17)(d).";

2256 (2) Subsection 63G-2-400.5(5) in S.B. 163 and Subsection 63G-2-400.5(6) in S.B. 277 be
2257 amended to read:

2258 "Records [committee-appellant] petitioner" means:

2259 (a) a political subdivision that seeks to appeal a[~~decision of a~~] local appeals board[~~to~~

2260 the State Records Committee] ~~decision to the director~~; or

2261 (b) a requester or interested party who seeks to appeal[~~to the State Records~~

2262 Committee a decision affirming] an access denial ~~to the director~~.";

2263 (3) Subsection 63G-2-400.5(7) enacted in S.B. 163 be amended to read:

2264 "(7) "Respondent affirmation" means a decision of a chief administrative officer, a

2265 local appeals board, or the director affirming an access denial.";

2266 (4) Subsections 63G-2-403(4) through (8) in S.B. 163 and S.B. 277 be amended to read:

2267 "(4) (a) Except as provided in Subsections (4)(b) [and (e)] ~~through (d)~~, no later than

2268 seven business days after [receiving a notice of appeal, the executive secretary of the

2269 State Records Committee] ~~the day on which the director receives a notice of appeal, the~~

2270 director shall:

2271 (i) schedule a hearing for the [State Records Committee] ~~director~~ to discuss the appeal

2272 at the next regularly scheduled [committee meeting falling] ~~hearing date that is~~ at least

2273 16 ~~calendar~~ days after the date the notice of appeal is filed but no [longer than 64] ~~later~~

2274 than 90 calendar days after the date on which the notice of appeal ~~[was]~~ is filed, except

2275 that the ~~[committee]~~ director may schedule an expedited hearing upon application of the

2276 records ~~[committee-appellant]~~ petitioner and for good cause shown;

2277 (ii) send a copy of the notice of hearing to the records ~~[committee-appellant]~~ petitioner;

2278 and

2279 (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing

2280 to:

2281 ~~[(A) each member of the State Records Committee;]~~

2282 ~~[(B)]~~ (A) the records officer and the chief administrative officer of the governmental

2283 entity whose access denial is the subject of the appeal, if the records ~~[committee~~

2284 ~~appellant]~~ petitioner is a requester or interested party;and

2285 ~~[(C) any person who made a business confidentiality claim under Section 63G-2-309~~

2286 ~~for a record that is the subject of the appeal; and]~~

2287 ~~[(D)]~~ (B) ~~[all persons]~~ any person who participated in the proceedings before the

2288 governmental entity's chief administrative officer, if the appeal is of the chief

2289 administrative officer's decision affirming an access denial.

2290 ~~(b)[- (i)]~~ The ~~[executive secretary of the State Records Committee]~~ director may

2291 decline to schedule a hearing if the record series that is the subject of the appeal ~~[has~~

2292 ~~been found by the committee in a previous hearing involving the same governmental~~

2293 ~~entity to be appropriately classified as private, controlled, or protected]~~ is substantially

2294 similar to an appeal previously decided by the director.

2295 ~~(c)[- (ii) -(A)]~~ If, under Subsection (4)(b), the ~~[executive secretary of the State Records~~

2296 ~~Committee]~~ director declines to schedule a hearing, the ~~[executive secretary shall send a~~

2297 ~~notice to the records committee appellant indicating that the request for hearing has been~~

2298 ~~denied and the reason for the denial:]~~ director shall:

2299 (i) render a written decision and enter an order consistent with the previous decision;

2300 and

2301 (ii) provide the parties with:

2302 (A) a copy of the written decision and order;

2303 (B) notice that the director declined to schedule a hearing, that explains the reason for

2304 declining; and

2305 (C) notice of the right to appeal the decision and order, as described in Subsection

2306 (15).

2307 ~~[(B) The State Records Committee shall make rules to implement this section as~~

2308 provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.]
 2309 [(e)] (d) The [executive secretary of the State Records Committee] director may
 2310 schedule a hearing on an appeal to the [State Records Committee at a regularly
 2311 scheduled State Records Committee meeting] director on a regularly-scheduled hearing
 2312 date that is later than the period described in Subsection (4)(a)(i) if that [committee
 2313 meeting] hearing date is the first [regularly-scheduled State Records Committee meeting]
 2314 hearing date at which there are fewer than 10 appeals scheduled to be heard.
 2315 (5) (a) No later than five business days before the day of the hearing, [a governmental
 2316 entity shall submit to the executive secretary of the State Records Committee] each party
 2317 shall provide to the director a written statement of facts, reasons, and legal authority in
 2318 support of the [governmental entity's] party's position.
 2319 (b) [The governmental entity shall send a copy of the written statement by first class
 2320 mail, postage prepaid, to the requester or interested party] Each party shall send a copy of
 2321 the party's written statement to each other party involved in the appeal, by email, on the
 2322 same day on which the party complies with Subsection (5)(a). [The executive secretary
 2323 shall forward a copy of the written statement to each member of the State Records
 2324 Committee.]
 2325 (6) (a) No later than [10] 15 business days [after the day on which the executive
 2326 secretary sends the notice of appeal] before the day of the hearing, a person whose legal
 2327 interests may be substantially affected by the proceeding may file a request for
 2328 intervention with the [State Records Committee] director.
 2329 (b) Any written statement of facts, reasons, and legal authority in support of the
 2330 intervenor's position shall be filed with the request for intervention.
 2331 (c) The person seeking intervention shall provide copies of the statement described in
 2332 Subsection (6)(b) to all parties to the proceedings before the [State Records Committee]
 2333 director.
 2334 (7) The [State Records Committee] director shall hold a hearing within the period of
 2335 time described in Subsection (4).
 2336 (8) At the hearing, the [State Records Committee] director:
 2337 (a) shall allow the parties to testify, present evidence, and comment on the issues[;
 2338 The committee] ; and
 2339 (b) may allow other interested persons to comment on the issues.";
 2340 (5) Subsections 63G-2-403(16) and (17), enacted in S.B 163, be amended to read:
 2341 "(16) The director may:

2342 (a) decline to schedule a hearing regarding a disputed fee, fee amount, or fee waiver
2343 if the director determines that the petition for hearing is without merit; or
2344 (b) request that the governmental entity provide information regarding how the fee
2345 was calculated.
2346 (17) If the director declines to schedule a hearing under Subsection (16)(a), the
2347 director shall:
2348 (a) issue an order declining to schedule a hearing that includes the reasons for
2349 declining to schedule a hearing; and
2350 (b) send a copy of the order described in Subsection (17)(a) to the parties."; and
2351 (6) the changes to Subsection 63G-2-701(6)(c) in S.B. 277 supersede the changes to
2352 Subsection 63G-2-701(6)(c) in S.B. 163.