

GOVERNMENT RECORDS AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory H. Hughes

Senate Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill amends provisions related to government records.

Highlighted Provisions:

This bill:

- ▶ corrects a cross-reference;
- ▶ modifies language to comply with standardized definitions;
- ▶ provides that intentional and knowing destruction or mutilation of the record-copy of a record in violation of a retention schedule is a class B misdemeanor;
- ▶ permits a governmental entity to charge a fee equal to the actual value of the costs of researching and responding to a records request if the requester has submitted more than 12 requests within a one-year period;
- ▶ exempts from the above requirement those requests that are made for a story or report for general publication;
- ▶ provides cross-references between the Archives and Records Service chapter and the Government Records Access and Management Act;
- ▶ clarifies that an employee of a governmental entity may be disciplined or fired for intentionally and knowingly destroying or mutilating a record in violation of a retention schedule; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **20A-2-104**, as last amended by Laws of Utah 2008, Chapter 382

34 **63A-12-105**, as renumbered and amended by Laws of Utah 2008, Chapter 382

35 **63G-2-203**, as renumbered and amended by Laws of Utah 2008, Chapter 382

36 **63G-2-803**, as renumbered and amended by Laws of Utah 2008, Chapter 382

37 **63G-2-804**, as renumbered and amended by Laws of Utah 2008, Chapter 382



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

40 Section 1. Section **20A-2-104** is amended to read:

41 **20A-2-104. Voter registration form -- Registered voter lists -- Fees for copies.**

42 (1) Every person applying to be registered shall complete a registration form printed in
43 substantially the following form:

44 -----

45 UTAH ELECTION REGISTRATION FORM

46 Are you a citizen of the United States of America? Yes No

47 Will you be 18 years old on or before election day? Yes No

48 If you checked "no" to either of the above two questions, do not complete this form.

49 Name of Voter

50 _____

51 First Middle Last

52 Driver License or Identification Card Number _____

53 State of issuance of Driver License or Identification Card

54 Date of Birth _____

55 Street Address of Principal Place of Residence

56 _____

57 City County State Zip Code

58 Telephone Number (optional) _____

59 Last four digits of Social Security Number _____

60 Last former address at which I was registered to vote (if known) _____

61 _____

62 City County State Zip Code

63 Political Party

64 (a listing of each registered political party, as defined in Section 20A-8-101 and maintained by
65 the lieutenant governor under Section 67-1a-2, with each party's name preceded by a checkbox)

66 Unaffiliated (no political party preference) Other (Please specify)_____

67 I do swear (or affirm), subject to penalty of law for false statements, that the
68 information contained in this form is true, and that I am a citizen of the United States and a
69 resident of the state of Utah, residing at the above address. I will be at least 18 years old and
70 will have resided in Utah for 30 days immediately before the next election. I am not a
71 convicted felon currently incarcerated for commission of a felony.

72 Signed and sworn

73 _____

74 Voter's Signature

75 _____(month/day/year).

76 CITIZENSHIP AFFIDAVIT

77 Name:

78 Name at birth, if different:

79 Place of birth:

80 Date of birth:

81 Date and place of naturalization (if applicable):

82 I hereby swear and affirm, under penalties for voting fraud set forth below, that I am a
83 citizen and that to the best of my knowledge and belief the information above is true and
84 correct.

85 _____

86 Signature of Applicant

87 In accordance with Section 20A-2-401, the penalty for willfully causing, procuring, or
88 allowing yourself to be registered to vote if you know you are not entitled to register to vote is
89 up to one year in jail and a fine of up to \$2,500.

90 NOTICE: IN ORDER TO BE ALLOWED TO VOTE IN A VOTING PRECINCT FOR THE
91 FIRST TIME OR TO VOTE DURING THE EARLY VOTING PERIOD BEFORE THE
92 DATE OF THE ELECTION, YOU MUST PRESENT VALID VOTER IDENTIFICATION
93 TO THE POLL WORKER BEFORE VOTING AS FOLLOWS:

94 (1) A VALID FORM OF PHOTO IDENTIFICATION THAT SHOWS YOUR NAME,
95 PHOTOGRAPH, AND CURRENT ADDRESS; OR

96 (2) TWO DIFFERENT FORMS OF IDENTIFICATION THAT SHOW YOUR NAME AND
97 CURRENT ADDRESS.

98 FOR OFFICIAL USE ONLY

99 Type of I.D. _____

100 Voting Precinct _____

101 Voting I.D. Number _____

102 -----

103 (2) The county clerk shall retain a copy in a permanent countywide alphabetical file,
104 which may be electronic or some other recognized system.

105 (3) (a) Each county clerk shall retain lists of currently registered voters.

106 (b) The lieutenant governor shall maintain a list of registered voters in electronic form.

107 (c) If there are any discrepancies between the two lists, the county clerk's list is the
108 official list.

109 (d) The lieutenant governor and the county clerks may charge the fees established
110 under the authority of [~~Subsection~~] Section 63G-2-203[~~(10)~~] to individuals who wish to obtain
111 a copy of the list of registered voters.

112 (4) When political parties not listed on the voter registration form qualify as registered
113 political parties under Title 20A, Chapter 8, Political Party Formation and Procedures, the
114 lieutenant governor shall inform the county clerks about the name of the new political party
115 and direct the county clerks to ensure that the voter registration form is modified to include that
116 political party.

117 (5) Upon receipt of a voter registration form from an applicant, the county clerk or the
118 clerk's designee shall:

119 (a) review each voter registration form for completeness and accuracy; and

120 (b) if the county clerk believes, based upon a review of the form, that a person may be

121 seeking to register to vote who is not legally entitled to register to vote, refer the form to the
122 county attorney for investigation and possible prosecution.

123 Section 2. Section **63A-12-105** is amended to read:

124 **63A-12-105. Records are property of the state -- Disposition -- Penalties for**
125 **intentional mutilation or destruction.**

126 (1) All records created or maintained by a state governmental entity [~~of the state~~] are
127 the property of the state and shall not be mutilated, destroyed, or otherwise damaged or
128 disposed of, in whole or part, except as provided in this chapter and Title 63G, Chapter 2,
129 Government Records Access and Management Act.

130 (2) (a) Except as provided in Subsection (2)(b), all records created or maintained by a
131 political subdivision of the state are the property of the state and shall not be mutilated,
132 destroyed, or otherwise damaged or disposed of, in whole or in part, except as provided in this
133 chapter and Title 63G, Chapter 2, Government Records Access and Management Act.

134 (b) Records which constitute a valuable intellectual property shall be the property of
135 the political subdivision.

136 (c) The state archives may, upon request from a political subdivision, take custody of
137 any record series of the political subdivision. A political subdivision which no longer wishes
138 to maintain custody of a record which must be retained under the political subdivision's
139 retention schedule or the state archive's retention schedule shall transfer it to the state archives
140 for safekeeping and management.

141 (3) (a) It is unlawful for a [~~governmental entity or political subdivision~~] person to
142 intentionally mutilate, destroy, or to otherwise damage or dispose of the record-copy of a
143 record [~~series~~] knowing that [~~such~~] the mutilation, destruction, [~~or~~] damage, or disposal is in
144 contravention of [~~the political subdivision's or the state archive's~~]:

145 (i) a governmental entity's properly adopted retention schedule; or

146 (ii) if no retention schedule has been properly adopted by the governmental entity, the
147 model retention schedule, as provided in Section 63G-2-604.

148 (b) Violation of this Subsection (3) is a class B misdemeanor.

149 (c) An employee of a governmental entity that violates this Subsection (3) may be
150 subject to disciplinary action as provided under Section 63G-2-804.

151 Section 3. Section **63G-2-203** is amended to read:

152 **63G-2-203. Fees.**

153 (1) A governmental entity may charge a reasonable fee to cover the governmental
154 entity's actual cost of providing a record. This fee shall be approved by the governmental
155 entity's executive officer.

156 (2) (a) When a governmental entity compiles a record in a form other than that
157 normally maintained by the governmental entity, the actual costs under this section may include
158 the following:

159 (i) the cost of staff time for compiling, formatting, manipulating, packaging,
160 summarizing, or tailoring the record either into an organization or media to meet the person's
161 request;

162 (ii) the cost of staff time for search, retrieval, and other direct administrative costs for
163 complying with a request; and

164 (iii) in the case of fees for a record that is the result of computer output other than word
165 processing, the actual incremental cost of providing the electronic services and products
166 together with a reasonable portion of the costs associated with formatting or interfacing the
167 information for particular users, and the administrative costs as set forth in Subsections
168 (2)(a)(i) and (ii).

169 (b) ~~[An]~~ Except as provided in Subsection (10), an hourly charge under Subsection
170 (2)(a) may not exceed the salary of the lowest paid employee who, in the discretion of the
171 custodian of records, has the necessary skill and training to perform the request.

172 (c) ~~[Notwithstanding]~~ Except as provided in Subsection (10) and notwithstanding
173 Subsections (2)(a) and (b), no charge may be made for the first quarter hour of staff time.

174 (3) (a) Fees shall be established as provided in this Subsection (3).

175 (b) A governmental entity with fees established by the Legislature:

176 (i) shall establish the fees defined in Subsection (2), or other actual costs associated
177 with this section through the budget process; and

178 (ii) may use the procedures of Section 63J-1-303 to set fees until the Legislature
179 establishes fees through the budget process.

180 (c) Political subdivisions shall establish fees by ordinance or written formal policy
181 adopted by the governing body.

182 (d) The judiciary shall establish fees by rules of the judicial council.

183 (4) A governmental entity may fulfill a record request without charge and is
184 encouraged to do so when it determines that:

185 (a) releasing the record primarily benefits the public rather than a person;

186 (b) the individual requesting the record is the subject of the record, or an individual
187 specified in Subsection 63G-2-202(1) or (2); or

188 (c) the requester's legal rights are directly implicated by the information in the record,
189 and the requester is impecunious.

190 (5) ~~[(A)]~~ Except as provided in Subsection (10), a governmental entity may not charge a
191 fee for:

192 (a) reviewing a record to determine whether it is subject to disclosure, except as
193 permitted by Subsection (2)(a)(ii); or

194 (b) inspecting a record.

195 (6) (a) A person who believes that there has been an unreasonable denial of a fee
196 waiver under Subsection (4) may appeal the denial in the same manner as a person appeals
197 when inspection of a public record is denied under Section 63G-2-205.

198 (b) The adjudicative body hearing the appeal has the same authority when a fee waiver
199 or reduction is denied as it has when the inspection of a public record is denied.

200 (7) (a) All fees received under this section by a governmental entity subject to
201 Subsection (3)(b) shall be retained by the governmental entity as a dedicated credit.

202 (b) Those funds shall be used to recover the actual cost and expenses incurred by the
203 governmental entity in providing the requested record or record series.

204 (8) (a) A governmental entity may require payment of past fees and future estimated
205 fees before beginning to process a request if:

206 (i) fees are expected to exceed \$50; or

207 (ii) the requester has not paid fees from previous requests.

208 (b) Any prepaid amount in excess of fees due shall be returned to the requester.

209 ~~[(9) This section does not alter, repeal, or reduce fees established by other statutes or
210 legislative acts.]~~

211 ~~[(10)]~~ (9) (a) Notwithstanding Subsection (3)(c), fees for voter registration records
212 shall be set as provided in this Subsection ~~[(10)]~~ (9).

213 (b) The lieutenant governor shall:

214 (i) after consultation with county clerks, establish uniform fees for voter registration
215 and voter history records that meet the requirements of this section; and

216 (ii) obtain legislative approval of those fees by following the procedures and
217 requirements of Section 63J-1-303.

218 (10) (a) Notwithstanding any other provision of this section, if the person making the
219 request has submitted more than 12 records requests to the governmental entity within the
220 one-year period immediately preceding the date of the request, the governmental entity shall be
221 permitted to require payment of a fee for the request that is equal to the total of:

222 (i) the actual cost of materials used in responding to the request;

223 (ii) the cost of staff time for search, retrieval, and other direct administrative costs for
224 complying with the request, which shall be calculated by adding together the cost for each staff
225 person directly participating, using the actual time spent by each participating person
226 multiplied by that person's hourly wage; and

227 (iii) the actual cost of any professional services incurred by the governmental entity for
228 search, retrieval, or other direct administrative costs, including legal, accounting, or printing
229 services.

230 (b) This Subsection (10) does not apply to a records request that seeks to obtain
231 information for a story or report for publication or broadcast to the general public.

232 (11) This section does not alter, repeal, or reduce fees established by other statutes or
233 legislative acts.

234 Section 4. Section **63G-2-803** is amended to read:

235 **63G-2-803. No individual liability for certain decisions of a governmental entity.**

236 (1) Neither the governmental entity [~~or political subdivision~~], nor any officer or
237 employee of the governmental entity [~~or political subdivision~~], is liable for damages resulting
238 from the release of a record where the person or government requesting the record presented
239 evidence of authority to obtain the record even if it is subsequently determined that the
240 requester had no authority.

241 (2) Neither the governmental entity [~~or political subdivision~~], nor any officer or
242 employee of the governmental entity [~~or political subdivision~~], is liable for damages arising
243 from the negligent disclosure of records classified as private under Subsection 63G-2-302(1)(f)
244 unless:

245 (a) the disclosure was of employment records maintained by the governmental entity;

246 or

247 (b) the current or former government employee had previously filed the notice required
248 by Section 63G-2-303 and:

249 (i) the government entity did not take reasonable steps to preclude access or
250 distribution of the record; or

251 (ii) the release of the record was otherwise willfully or grossly negligent.

252 (3) A mailing from a government agency to an individual who has filed an application
253 under Section 63G-2-303 is not a wrongful disclosure under this chapter or under Title 63A,
254 Chapter 12, Archives and Records Service.

255 Section 5. Section **63G-2-804** is amended to read:

256 **63G-2-804. Disciplinary action.**

257 A governmental entity [~~or political subdivision~~] may take disciplinary action which may
258 include suspension or discharge against any employee of the governmental entity [~~or political~~
259 ~~subdivision~~] who intentionally violates any provision of this chapter or Subsection
260 63A-12-105(3).

Legislative Review Note
as of 2-13-09 10:59 AM

Office of Legislative Research and General Counsel

H.B. 362 - Government Records Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations and may result in a minimal increase in fee revenue to state agencies.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for businesses; though local governments may receive a minimal increase in fee revenue and certain individuals may be charged additional records access fees.
