

# SB0277S04 compared with SB0277

{Omitted text} shows text that was in SB0277 but was omitted in SB0277S04

inserted text shows text that was not in SB0277 but was inserted into SB0277S04

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1                                    **Government Records Management Amendments**  
    2025 GENERAL SESSION  
    STATE OF UTAH  
    **Chief Sponsor: Michael K. McKell**  
    House Sponsor:Jefferson Moss



2  
3 **LONG TITLE**

4 **General Description:**

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

9 **Highlighted Provisions:**

10        This bill:

- 11        ▶ defines terms;
- 12        ▶ creates the office within the division and describes the functions of the office;
- 13        ▶ requires the governor to appoint the director of the office, in consultation with the executive  
14        director of the department, and with the advice and consent of the Senate;
- 15        ▶ describes the term of office, qualifications, and duties of the director;
- 16        ▶ directs the Division of Human Resource Management to conduct a performance survey and  
17        evaluation of the director on a specified schedule;
- 16        ▶ repeals the committee;

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- 17       ▶ 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;
- 20       ▶ makes the government records ombudsman an employee of the office;
- 21       ▶ grants rulemaking authority to the director of the office;
- 22       ▶ provides for the transition from the committee to the director of the office;
- 23       ▶ ~~{ removes subjective balancing test provisions for determining the confidentiality of a  
record; and }~~
- 25       ▶ provides that an individual in an executive branch management position is subject to the  
record amendment or retention policy created by the governor;
- 25       ▶ makes technical and conforming changes{ } ; and
- 28       ▶ 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.

### 32 Money Appropriated in this Bill:

33       None

### 34 Other Special Clauses:

35       This bill provides coordination clauses.

### 37 AMENDS:

38       **20A-11-1205** , as last amended by Laws of Utah 2020, Chapter 22 , as last amended by Laws of  
Utah 2020, Chapter 22

33       ~~{26B-2-709 , as renumbered and amended by Laws of Utah 2024, Chapter 267 , as  
renumbered and amended by Laws of Utah 2024, Chapter 267}~~

39       **53B-16-303** , as last amended by Laws of Utah 2020, Chapter 365 , as last amended by Laws of  
Utah 2020, Chapter 365

40       **63A-12-101** , as last amended by Laws of Utah 2023, Chapter 173 , as last amended by Laws of  
Utah 2023, Chapter 173

41       **63A-12-106** , as last amended by Laws of Utah 2019, Chapter 254 , as last amended by Laws of  
Utah 2019, Chapter 254

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63G-2-103 , as last amended by Laws of Utah 2024, Chapters 18, 465, 509, and 522 , as last amended by Laws of Utah 2024, Chapters 18, 465, 509, and 522

43 63G-2-201 , as last amended by Laws of Utah 2023, Chapters 173, 516 , as last amended by Laws of Utah 2023, Chapters 173, 516

39 ~~63G-2-202 , as last amended by Laws of Utah 2024, Chapter 288 , as last amended by Laws of Utah 2024, Chapter 288}~~

44 63G-2-209 , as enacted by Laws of Utah 2023, Chapter 516 , as enacted by Laws of Utah 2023, Chapter 516

45 63G-2-309 , as last amended by Laws of Utah 2023, Chapter 516 , as last amended by Laws of Utah 2023, Chapter 516

46 63G-2-400.5 , as last amended by Laws of Utah 2019, Chapters 254, 334 , as last amended by Laws of Utah 2019, Chapters 254, 334

47 63G-2-401 , as last amended by Laws of Utah 2024, Chapter 407 , as last amended by Laws of Utah 2024, Chapter 407

48 63G-2-402 , as last amended by Laws of Utah 2024, Chapter 407 , as last amended by Laws of Utah 2024, Chapter 407

49 63G-2-403 , as last amended by Laws of Utah 2024, Chapter 407 , as last amended by Laws of Utah 2024, Chapter 407

50 63G-2-404 , as last amended by Laws of Utah 2024, Chapter 407 , as last amended by Laws of Utah 2024, Chapter 407

47 ~~63G-2-405 , as last amended by Laws of Utah 2022, Chapter 388 , as last amended by Laws of Utah 2022, Chapter 388}~~

51 63G-2-701 , as last amended by Laws of Utah 2019, Chapter 254 , as last amended by Laws of Utah 2019, Chapter 254

52 63G-2-702 , as last amended by Laws of Utah 2023, Chapter 516 , as last amended by Laws of Utah 2023, Chapter 516

53 63G-2-703 , as last amended by Laws of Utah 2023, Chapters 291, 516 , as last amended by Laws of Utah 2023, Chapters 291, 516

54 **63G-2-704 , as enacted by Laws of Utah 2023, Chapter 516 , as enacted by Laws of Utah 2023, Chapter 516**

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63G-2-801 , as last amended by Laws of Utah 2019, Chapter 254 , as last amended by Laws of Utah 2019, Chapter 254

56 63H-1-202 , as last amended by Laws of Utah 2024, Chapter 514 , as last amended by Laws of Utah 2024, Chapter 514

53 ~~67-1b-104 , as enacted by Laws of Utah 2021, Chapter 394 , as enacted by Laws of Utah 2021, Chapter 394~~

57 67-3-1 , as last amended by Laws of Utah 2024, Chapters 3, 158 , as last amended by Laws of Utah 2024, Chapters 3, 158

58 77-18-103 , as last amended by Laws of Utah 2024, Chapters 187, 245 and 434 , as last amended by Laws of Utah 2024, Chapters 187, 245 and 434

59 77-27-5 , as last amended by Laws of Utah 2024, Chapters 145, 187 and 208 , as last amended by Laws of Utah 2024, Chapters 145, 187 and 208

60 ENACTS:

61 63A-12-201 , Utah Code Annotated 1953 , Utah Code Annotated 1953

62 63A-12-202 , Utah Code Annotated 1953 , Utah Code Annotated 1953

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

64 63A-12-205 , Utah Code Annotated 1953 , 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, Chapter 407) , (Renumbered from 63A-12-111, as last amended by Laws of Utah 2024, Chapter 407)

68 REPEALS:

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

66 ~~63G-2-406 , as last amended by Laws of Utah 2013, Chapter 445 , as last amended by Laws of Utah 2013, Chapter 445~~

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

71 63G-2-502 , as last amended by Laws of Utah 2019, Chapter 254 , 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 , Utah Code Annotated 1953

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74 **63G-2-400.5** , as last amended by Laws of Utah 2019, Chapters 254, 334 , 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 , as last amended by Laws of Utah  
2024, Chapter 407

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

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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.**

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

75 (a) for a political purpose;

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

78 (c) to solicit a campaign contribution.

79 (2)

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

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

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

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

89 (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.

92 (4) For purposes of this section, one violation means one act of sending an email, regardless of the  
number of recipients of the email.

94 (5) A person does not violate this section if:

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- 95 (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;
- 97 (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;
- 99 (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:
- 102 (i) relates to the same proposed initiative, initiative, proposed referendum, or referendum; and
- 104 (ii) complies with the requirements of Section 20A-7-401.5 or 20A-7-402; or
- 105 (d) the person is engaging in:
- 106 (i) an internal communication solely within the public entity;
- 107 (ii) a communication solely with another public entity;
- 108 (iii) a communication solely with legal counsel;
- 109 (iv) a communication solely with the sponsors of an initiative or referendum;
- 110 (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
- 112 (vi) a communication solely with a person involved in a business transaction directly relating to a  
project described in Subsection (5)(d)(v).
- 114 (6) A violation of this section does not invalidate an otherwise valid election.
- 115 (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).

120 {Section 2. Section ~~26B-2-709~~ is amended to read: }

### 121 **26B-2-709. Complaint investigations -- Records.**

122 (1) As used in this section:

- 123 (a) "Anonymous complainant" means a complainant for whom the department does not have the  
minimum personal identifying information necessary, including the complainant's full name, to  
attempt to communicate with the complainant after a complaint has been made.
- 127 (b) "Child care program" means the same as that term is defined in Section 26B-2-401.
- 128

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- 133 (c) "Confidential complainant" means a complainant for whom the department has the minimum  
134 personal identifying information necessary, including the complainant's full name, to attempt  
to communicate with the complainant after a complaint has been made, but who elects under  
Subsection (3)(c) not to be identified to the subject of the complaint.
- 136 (d) "Exempt provider" means the same as that term is defined in Section 26B-2-401.
- 138 (e) "Subject of the complaint" means the provider about whom the complainant is informing the  
department.
- 136 (2) The department may conduct investigations necessary to enforce the provisions of this chapter.
- 138 (3)
- (a) If the department receives a complaint about a program or facility or an exempt provider, the  
department shall:
- 140 (i) solicit information from the complainant to determine whether the complaint suggests actions or  
conditions that could pose a serious risk to the safety or well-being of a client;
- 143 (ii) as necessary:
- 144 (A) encourage the complainant to disclose the minimum personal identifying information necessary,  
including the complainant's full name, for the department to attempt to subsequently communicate  
with the complainant;
- 147 (B) if the complaint is against a child care program or an exempt provider, inform the complainant that  
the department may not investigate an anonymous complaint;
- 150 (C) if the complaint is not against a child care program or an exempt provider, inform the complainant  
that the department may not use information provided by the complainant to substantiate an alleged  
violation of state law or department rule unless the department independently corroborates the  
information;
- 155 (D) inform the complainant that the identity of a confidential complainant may be withheld from the  
subject of a complaint only as provided in Subsection (3)(c)(iii); and
- 158 (E) inform the complainant that the department may be limited in its use of information provided by a  
confidential complainant, as provided in Subsection (3)(c)(iii)(B); and
- 161 (iii) inform the complainant that a person is guilty of a class B misdemeanor under Section  
76-8-506 if the person gives false information to the department with the purpose of inducing a  
change in that person's or another person's license, certificate, or certification status.
- 165

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- (b) If the complainant elects to be an anonymous complainant, or if the complaint concerns events that occurred more than six months before the complainant contacted the department, the department:
- 168 (i) shall refer the information in the complaint to the Division of Child and Family Services within the department, law enforcement, or any other appropriate agency, if the complaint suggests actions or conditions which could pose a serious risk to the safety or well-being of a client;
- 172 (ii) may not investigate or substantiate the complaint if the complaint is against a child care program or an exempt provider; and
- 174 (iii) may, during a regularly scheduled annual survey, inform the provider that is the subject of the complaint of allegations or concerns raised by the anonymous complainant.
- 177 (c)
- (i) If the complainant elects to be a confidential complainant, the department shall determine whether the complainant wishes to remain confidential:
- 179 (A) only until the investigation of the complaint has been completed; or
- 180 (B) indefinitely.
- 181 (ii) If the complainant elects to remain confidential only until the investigation of the complaint has been completed, the department shall disclose the name of the complainant to the subject of the complaint at the completion of the investigation, but no sooner.
- 185 (iii) If the complainant elects to remain confidential indefinitely, the department:
- 186 (A) ~~[notwithstanding Subsection 63G-2-201(5)(b), ]~~ may not disclose the name of the complainant, including to the subject of the complaint; and
- 188 (B) may not use information provided by the complainant to substantiate an alleged violation of state law or department rule unless the department independently corroborates the information.
- 191 (4)
- (a) Prior to conducting an investigation of a program or facility or an exempt provider in response to a complaint, a department investigator shall review the complaint with the investigator's supervisor.
- 194 (b) The investigator may proceed with the investigation only if:
- 195 (i) the supervisor determines the complaint is credible;
- 196 (ii) the complaint is not from an anonymous complainant and against a child care program or an exempt provider; and
- 198 (iii) prior to the investigation, the investigator informs the subject of the complaint of:
- 199 (A) except as provided in Subsection (3)(c), the name of the complainant; and



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- 200 (B) except as provided in Subsection (4)(c), the substance of the complaint.
- 201 (c) An investigator is not required to inform the subject of a complaint of the substance of the complaint  
prior to an investigation if doing so would jeopardize the investigation. However, the investigator  
shall inform the subject of the complaint of the substance of the complaint as soon as doing so will  
no longer jeopardize the investigation.
- 206 (5) If the department is unable to substantiate a complaint, any record related to the complaint or the  
investigation of the complaint[;]
- 208 [(a)] shall be classified under Title 63G, Chapter 2, Government Records Access and Management  
Act, as:
- 210 [(i)] (a) a private or controlled record if appropriate under Section 63G-2-302 or 63G-2-304; or
- 212 [(ii)] (b) a protected record under Section 63G-2-305[; and] .
- 213 [(b) if disclosed in accordance with Subsection 63G-2-201(5)(b), may not identify an individual  
provider, exempt provider, or complainant.]
- 215 (6) Any record of the department related to a complaint is a protected record under Title 63G,  
Chapter 2, Government Records Access and Management Act, and[; notwithstanding Subsection  
63G-2-201(5)(b);] may not be disclosed in a manner that identifies an individual program or facility,  
exempt provider, provider, or complainant.
- 128 Section 2. Section **53B-16-303** is amended to read:
- 129 **53B-16-303. Access to restricted records.**
- 130 (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:
- 224 {(+)}
- 133 (1) (a) written consent of the public institution of higher education originating, receiving, or  
maintaining [~~such~~] the records; or
- 226 (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.}

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141 (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} .

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

144 **63A-12-101. Division of Archives and Records Service created -- Duties.**

- 236 (1) There is created the Division of Archives and Records Service within the department.
- 237 (2) The state archives shall:
- 238 (a) administer the state's archives and records management programs, including storage of records,  
central reformatting programs, and quality control;
- 240 (b) apply fair, efficient, and economical management methods to the collection, creation, use,  
maintenance, retention, preservation, disclosure, and disposal of records and documents;
- 243 (c) establish standards, procedures, and techniques for the effective management and physical care of  
records;
- 245 (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;
- 248 (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;
- 252 (f) establish, maintain, and operate centralized reformatting lab facilities and quality control for the  
state;
- 254 (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;
- 257 (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;
- 260 (i) provide access to public records deposited in the archives;
- 261 (j) administer and maintain the Utah Public Notice Website established under Section 63A-16-601;
- 263 (k) provide assistance to any governmental entity in administering this chapter and Title 63G, Chapter  
2, Government Records Access and Management Act;
- 265 (l) prepare forms for use by all governmental entities for a person requesting access to a record; and

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- 267 (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:
- 270 (i) the proposed rate schedule as required by Section 63A-1-114; and  
271 (ii) other information or analysis requested by the Rate Committee.
- 272 (3) The state archives may:
- 273 (a) establish a report and directives management program;  
274 (b) establish a forms management program; and  
275 (c) in accordance with Section 63A-12-101, require that an individual undergo a background check if  
the individual:
- 277 (i) applies to be, or currently is, an employee or volunteer of the division; and  
278 (ii) will have direct access to a vulnerable record in the capacity described in Subsection (3)(c)(i).
- 280 (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.
- 192 Section 4. Section **63A-12-106** is amended to read:  
193 **63A-12-106. Certified and microphotographed copies.**  
285 (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.
- 290 (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.
- 292 (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.

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

209 Section 5. Section 5 is enacted to read:

211 **63A-12-201. Definitions.**

2. Government Records Office

As used in this part:

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

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

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

217 Section 6. Section 6 is enacted to read:

218 **63A-12-202. Government Records Office -- Director -- Annual report.**

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

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

312 (a) in consultation with the executive director; and

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

314 (3) The director shall be:

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

316 (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;

319 (c) committed to:

320 (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;

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

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

326 (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.

329 (4)

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

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

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(c) The governor may remove the director {with or without}, **only for cause, before the end of a four-year term.**

333 (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.

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

336 (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:**

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

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

252 Section 7. Section 7 is enacted to read:

253 **63A-12-203. Duties of director and office -- Reassignment of classification or designation --  
Rulemaking authority -- Transition from State Records Committee.**

342 (1) The director shall:

343 (a) supervise and manage the office;

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

346 (c) administer the records appeal process;

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

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

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

349 (2) The director may:

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

351 (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

355 (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.

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

359 (a) ensuring lawful access to records;

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- 360 (b) ensuring the lawful restriction of access to records;  
361 (c) classification of records;  
362 (d) retention of records; and  
363 (e) resolving records disputes informally, via informal mediation, or via the records appeal process.  
365 (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.  
368 (b) The district court shall hear an appeal described in Subsection (4)(a) de novo.  
369 (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.  
372 (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.  
375 (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.  
292 Section 8. Section **63A-12-204** is renumbered and amended to read:  
294 **[63A-12-111] 63A-12-204. Government records ombudsman.**  
381 [(1)  
(a) ~~The director of the division shall appoint a government records ombudsman.]~~  
382 [(b) ~~The government records ombudsman may not be a member of the State Records Committee created  
in Section 63G-2-501.~~]  
384 [(2)] (1)  
(a) The government records ombudsman, appointed under Section 63A-12-202, shall:  
386 (i) be familiar with the provisions of Title 63G, Chapter 2, Government Records Access and  
Management Act;  
388 (ii) serve as a resource for a person who is making or responding to a records request or filing an  
appeal relating to a records request; and  
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(iii) upon a request from a requester or responder, and with the consent of both the requester and responder, mediate a dispute between a requester and responder, including a dispute between a requester and a governmental entity regarding the governmental entity's access denial, as defined in Section 63G-2-400.5[; and] .

394 [(iv) on an annual basis, electronically transmit a written report to the Government Operations  
Interim Committee on the work performed by the government records ombudsman during the  
previous year.]

397 (b)

(i) Before the conclusion of a mediation under Subsection [~~(2)(a)(iii)~~] (1)(a)(iii), a requester or responder may withdraw consent for the mediation.

399 (ii) If a requester or responder withdraws consent under Subsection [~~(2)(b)(i)~~] (1)(b)(i), the government records ombudsman shall [~~certify, as provided in Subsection (4)(a)(ii)~~], in accordance with Subsection (3)(a)(ii), certify that the mediation was not concluded because of a lack of the required consent.

403 [~~(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 matter for which the government records ombudsman provides services under this section:

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

408 (b) before an administrative body[;] or a court [~~regarding a matter that the government records ombudsman provided services in relation to under this section~~].

410 [~~(4)~~] (3) Upon the conclusion of a mediation [~~under Subsection (2)(a)(iii)~~] described in Subsection (1)(a)(iii), or upon the government records ombudsman's determination that the required consent for the mediation is lacking, the government records ombudsman shall:

414 (a) certify in writing that the mediation:

415 (i) is concluded; or

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

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

333 Section 9. Section 9 is enacted to read:

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

335 (1)

## SB0277 compared with SB0277S04

- 338 (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.
- 340 (b) The Division of Human Resource Management shall include as survey respondents a sample of each  
341 of the following groups:
- 342 (i) individuals who have appeared before the director;  
343 (ii) staff who have worked with the director; and  
344 (iii) any other class of respondents the Division of Human Resource Management determines helpful.
- 345 (c) (i) A survey response is anonymous, including any comment included with a survey response.  
346 (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.
- 349 (2) In a survey under this section, the Division of Human Resource Management:
- 350 (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
- 353 (b) may include questions concerning the director's legal ability, temperament and integrity, and administrative performance.
- 355 (3) (a) The Division of Human Resource Management may allow survey respondents to indicate responses:
- 357 (i) on a numerical scale from one to five; or  
358 (ii) in the affirmative or negative, with an option to indicate the respondent's inability to respond in the affirmative or negative.
- 360 (b) To supplement a response to a survey question, the Division of Human Resource Management may allow a respondent to provide written comments.
- 362 (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:
- 365 (i) the results of the most recent survey conducted in accordance with this section; and  
366



## SB0277 compared with SB0277S04

(ii) any other information the Division of Human Resource Management considers relevant to evaluating the director's performance.

368

(b)

(i) The Division of Human Resource Management shall provide a copy of the director's performance evaluation to the governor.

370

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

374

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

375

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

As used in this chapter:

422

(1) "Audit" means:

423

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

426

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

429

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

431

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

433

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

434

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

437

(4)

(a) "Computer program" means:

438

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

441

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

## SB0277 compared with SB0277S04

- 443 (b) "Computer program" does not mean:
- 444 (i) the original data, including numbers, text, voice, graphics, and images;
- 445 (ii) analysis, compilation, and other manipulated forms of the original data produced by use of the  
program; or
- 447 (iii) the mathematical or statistical formulas, excluding the underlying mathematical algorithms  
contained in the program, that would be used if the manipulated forms of the original data were to  
be produced manually.
- 450 (5)
- (a) "Contractor" means:
- 451 (i) any person who contracts with a governmental entity to provide goods or services directly to a  
governmental entity; or
- 453 (ii) any private, nonprofit organization that receives funds from a governmental entity.
- 454 (b) "Contractor" does not mean a private provider.
- 455 (6) "Controlled record" means a record containing data on individuals that is controlled as provided by  
Section 63G-2-304.
- 457 (7) "Designation," "designate," and their derivative forms mean indicating, based on a governmental  
entity's familiarity with a record series or based on a governmental entity's review of a reasonable  
sample of a record series, the primary classification that a majority of records in a record series  
would be given if classified and the classification that other records typically present in the record  
series would be given if classified.
- 462 (8) "Elected official" means each person elected to a state office, county office, municipal office, school  
board or school district office, special district office, or special service district office, but does not  
include judges.
- 465 (9) "Explosive" means a chemical compound, device, or mixture:
- 466 (a) commonly used or intended for the purpose of producing an explosion; and
- 467 (b) that contains oxidizing or combustive units or other ingredients in proportions, quantities, or  
packing so that:
- 469 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or  
mixture may cause a sudden generation of highly heated gases; and
- 471 (ii) the resultant gaseous pressures are capable of:
- 472 (A) producing destructive effects on contiguous objects; or

## SB0277 compared with SB0277S04

- 473 (B) causing death or serious bodily injury.
- 474 (10) "Government audit agency" means any governmental entity that conducts an audit.
- 475 (11)
- (a) "Governmental entity" means:
- 476 (i) executive department agencies of the state, the offices of the governor, lieutenant governor,  
state auditor, attorney general, and state treasurer, the Board of Pardons and Parole, the Board  
of Examiners, the National Guard, the Career Service Review Office, the State Board of  
Education, the Utah Board of Higher Education, and the State Archives;
- 481 (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;
- 485 (iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar administrative  
units in the judicial branch;
- 487 (iv) any state-funded institution of higher education or public education; or
- 488 (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.
- 493 (b) "Governmental entity" also means:
- 494 (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;
- 497 (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;
- 500 (iii) as defined in Section 11-13a-102, a governmental nonprofit corporation;
- 501 (iv) an association as defined in Section 53G-7-1101;
- 502 (v) the Utah Independent Redistricting Commission; and
- 503 (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.
- 505 (c) "Governmental entity" does not include the Utah Educational Savings Plan created in Section  
53B-8a-103.

## SB0277 compared with SB0277S04

- 507 (12) "Government Records Office" means the same as that term is defined in Section 63A-12-201.
- 509 [(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.
- 513 [(13)] (14) "Individual" means a human being.
- 514 [(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:
- 518 (i) the date, time, location, and nature of the complaint, the incident, or offense;
- 519 (ii) names of victims;
- 520 (iii) the nature or general scope of the agency's initial actions taken in response to the incident;
- 522 (iv) the general nature of any injuries or estimate of damages sustained in the incident;
- 523 (v) the name, address, and other identifying information about any person arrested or charged in  
connection with the incident; or
- 525 (vi) the identity of the public safety personnel, except undercover personnel, or prosecuting attorney  
involved in responding to the initial incident.
- 527 (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).
- 532 (c) Initial contact reports do not include accident reports, as that term is described in Title 41, Chapter  
6a, Part 4, Accident Responsibilities.
- 534 [(15)] (16) "Legislative body" means the Legislature.
- 535 [(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.
- 538 [(17)] (18) "Person" means:
- 539 (a) an individual;

## SB0277 compared with SB0277S04

- 540 (b) a nonprofit or profit corporation;
- 541 (c) a partnership;
- 542 (d) a sole proprietorship;
- 543 (e) other type of business organization; or
- 544 (f) any combination acting in concert with one another.
- 545 ~~[(18)]~~ (19) "Personal identifying information" means the same as that term is defined in Section  
63A-12-100.5.
- 547 ~~[(19)]~~ (20) "Privacy annotation" means the same as that term is defined in Section 63A-12-100.5.
- 549 ~~[(20)]~~ (21) "Private provider" means any person who contracts with a governmental entity to provide  
services directly to the public.
- 551 ~~[(21)]~~ (22) "Private record" means a record containing data on individuals that is private as provided by  
Section 63G-2-302.
- 553 ~~[(22)]~~ (23) "Protected record" means a record that is classified protected as provided by Section  
63G-2-305.
- 555 ~~[(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).
- 557 ~~[(24)]~~ (25) "Reasonable search" means a search that is:
- 558 (a) reasonable in scope and intensity; and
- 559 (b) not unreasonably burdensome for the government entity.
- 560 ~~[(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:
- 563 (i) that is prepared, owned, received, or retained by a governmental entity or political subdivision;  
and
- 565 (ii) where all of the information in the original is reproducible by photocopy or other mechanical or  
electronic means.
- 567 (b) "Record" does not include:
- 568 (i) a personal note or personal communication prepared or received by an employee or officer of a  
governmental entity:
- 570 (A) in a capacity other than the employee's or officer's governmental capacity; or
- 571 (B) that is unrelated to the conduct of the public's business;

## SB0277 compared with SB0277S04

- 572 (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;
- 575 (iii) material that is legally owned by an individual in the individual's private capacity;
- 576 (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;
- 578 (v) proprietary software;
- 579 (vi) junk mail or a commercial publication received by a governmental entity or an official or employee  
of a governmental entity;
- 581 (vii) a book that is cataloged, indexed, or inventoried and contained in the collections of a library open  
to the public;
- 583 (viii) material that is cataloged, indexed, or inventoried and contained in the collections of a library  
open to the public, regardless of physical form or characteristics of the material;
- 586 (ix) a daily calendar ;
- 587 (x) a note prepared by the originator for the originator's own use or for the sole use of an individual for  
whom the originator is working;
- 589 (xi) a computer program that is developed or purchased by or for any governmental entity for its own  
use;
- 591 (xii) a note or internal memorandum prepared as part of the deliberative process by:
- 592 (A) a member of the judiciary;
- 593 (B) an administrative law judge;
- 594 (C) a member of the Board of Pardons and Parole; or
- 595 (D) a member of any other body, other than an association or appeals panel as defined in Section  
53G-7-1101, charged by law with performing a quasi-judicial function;
- 598 (xiii) a telephone number or similar code used to access a mobile communication device that is used  
by an employee or officer of a governmental entity, provided that the employee or officer of the  
governmental entity has designated at least one business telephone number that is a public record as  
provided in Section 63G-2-301;
- 603 (xiv) information provided by the Public Employees' Benefit and Insurance Program, created in Section  
49-20-103, to a county to enable the county to calculate the amount to be paid to a health care  
provider under Subsection 17-50-319(2)(e)(ii);

606

## SB0277 compared with SB0277S04

- (xv) information that an owner of unimproved property provides to a local entity as provided in Section 11-42-205;
- 608 (xvi) a video or audio recording of an interview, or a transcript of the video or audio recording, that is conducted at a Children's Justice Center established under Section 67-5b-102;
- 611 (xvii) child sexual abuse material, as defined by Section 76-5b-103;
- 612 (xviii) before final disposition of an ethics complaint occurs, a video or audio recording of the closed portion of a meeting or hearing of:
- 614 (A) a Senate or House Ethics Committee;
- 615 (B) the Independent Legislative Ethics Commission;
- 616 (C) the Independent Executive Branch Ethics Commission, created in Section 63A-14-202; or
- 618 (D) the Political Subdivisions Ethics Review Commission established in Section 63A-15-201;
- 620 (xix) confidential communication described in Section 58-60-102, 58-61-102, or 58-61-702;
- 622 (xx) any item described in Subsection [~~(25)(a)~~] (26)(a) that is:
- 623 (A) described in Subsection 63G-2-305(17), (18), or (23)(b); and
- 624 (B) shared between any of the following entities:
- 625 (I) the Division of Risk Management;
- 626 (II) the Office of the Attorney General;
- 627 (III) the governor's office; or
- 628 (IV) the Legislature; or
- 629 (xxi) the email address that a candidate for elective office provides to a filing officer under Subsection 20A-9-201(5)(c)(ii) or 20A-9-203(4)(c)(iv).
- 631 [~~(26)~~] (27) "Record series" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.
- 633 [~~(27)~~] (28) "Records officer" means the individual appointed by the chief administrative officer of each governmental entity, or the political subdivision to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.
- 637 [~~(28)~~] (29) "Schedule," "scheduling," and their derivative forms mean the process of specifying the length of time each record series should be retained by a governmental entity for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.

641

## SB0277 compared with SB0277S04

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

644 (a) conducted:

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

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

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

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

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

652 [(30)] (31) "State archives" means the Division of Archives and Records Service created in Section  
63A-12-101.

654 [(31)] (32) "State archivist" means the director of the state archives.

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

657 (33) "Summary data" means statistical records and compilations that contain data derived from private,  
controlled, or protected information but that do not disclose private, 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, protected,  
and other restricted records -- Disclosure and nondisclosure of records -- Certified copy of record  
-- Limits on obligation to respond to record request.**

664 (1)

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

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

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

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

671 (iii)

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



## SB0277 compared with SB0277S04

- 673 (B) that is part of an electronic file that also contains a record that is private, controlled, or protected;  
and
- 675 (C) that the governmental entity cannot readily segregate from the part of the electronic file that  
contains a private, controlled, or protected record.
- 677 (2) A record is public unless otherwise expressly provided by statute.
- 678 (3) The following records are not public:
- 679 (a) a record that is private, controlled, or protected under Sections 63G-2-302, 63G-2-303, 63G-2-304,  
and 63G-2-305; and
- 681 (b) a record to which access is restricted pursuant to court rule, another state statute, federal statute,  
or federal regulation, including records for which access is governed or restricted as a condition of  
participation in a state or federal program or for receiving state or federal funds.
- 685 (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.
- 687 (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),{}} ~~or~~ Section 63G-2-202,  
63G-2-206, or 63G-2-303.
- 690 {{(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:}}
- 694 {{(i) there is no interest in restricting access to the record; or}}
- 695 {{(ii) the interests favoring access are greater than or equal to the interest favoring restriction of  
access.}}
- 697 {{(c){} {{(b)}} }} {{ In addition to the disclosure under Subsection (5)(b), a{} A} governmental  
entity may disclose a record that is protected under Subsection 63G-2-305(51) if:
- 699 (i) the head of the governmental entity, or a designee, determines that the disclosure:
- 700 (A) is mutually beneficial to:
- 701 (I) the subject of the record;
- 702 (II) the governmental entity; and
- 703 (III) the public; and
- 704 (B) serves a public purpose related to:

## SB0277 compared with SB0277S04

- 705 (I) public safety; or  
706 (II) consumer protection; and  
707 (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.
- 709 (6) A governmental entity shall provide a person with a certified copy of a record if:  
710 (a) the person requesting the record has a right to inspect it;  
711 (b) the person identifies the record with reasonable specificity; and  
712 (c) the person pays the lawful fees.
- 713 (7)  
(a) In response to a request, a governmental entity is not required to:  
714 (i) create a record;  
715 (ii) compile, format, manipulate, package, summarize, or tailor information;  
716 (iii) provide a record in a particular format, medium, or program not currently maintained by the  
governmental entity;  
718 (iv) fulfill a person's records request if the request unreasonably duplicates prior records requests  
from that person;  
720 (v) fill a person's records request if:  
721 (A) the record requested is:  
722 (I) publicly accessible online; or  
723 (II) included in a public publication or product produced by the governmental entity receiving the  
request; and  
725 (B) the governmental entity:  
726 (I) specifies to the person requesting the record where the record is accessible online; or  
728 (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  
731 (vi) fulfill a person's records request if:  
732 (A) the person has been determined under Section 63G-2-209 to be a vexatious requester;  
734 (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  
738 (C) the period of time described in Subsection (7)(a)(vi)(B) has not expired.

## SB0277 compared with SB0277S04

- 739 (b) A governmental entity shall conduct a reasonable search for a requested record.  
740 (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.
- 744 (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.
- 748 (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.
- 751 (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.
- 756 (b) Subsection (9)(a) does not apply to:
- 757 (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
- 760 (ii) a record request that is submitted by an attorney of an individual described in Subsection (9)(a).
- 762 (10)
- (a) A governmental entity may allow a person requesting more than 50 pages of records to copy the records if:
- 764 (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
- 767 (ii) the governmental entity provides reasonable safeguards to protect the public from the potential for loss of a public record.
- 769 (b) If the requirements of Subsection (10)(a) are met, the governmental entity may:

## SB0277 compared with SB0277S04

- 770 (i) provide the requester with the facilities for copying the requested records and require that the  
772 requester make the copies; or
- 775 (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.
- 775 (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.
- 779 (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.
- 782 (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.
- 785 (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:
- 788 (a) the person making the request requests or states a preference for an electronic copy;
- 789 (b) the governmental entity currently maintains the record in an electronic format that is reproducible  
and may be provided without reformatting or conversion; and
- 791 (c) the electronic copy of the record:
- 792 (i) does not disclose other records that are exempt from disclosure; or
- 793 (ii) may be segregated to protect private, protected, or controlled information from disclosure without  
the undue expenditure of public resources or funds.
- 795 ~~{(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:}~~
- 798 ~~{(a) any personal privacy interests, including those in images, that would be affected by disclosure of~~  
~~the records in question; and}~~
- 800 ~~{(b) any public interests served by disclosure.}~~
- 801 ~~{Section 12. Section 63G-2-202 is amended to read: }~~
- 802 **63G-2-202. Access to private, controlled, and protected documents.**

## SB0277 compared with SB0277S04

- 803 (1) Except as provided in Subsection [~~(11)~~(a)] (10)(a), a governmental entity:
- 804 (a) shall, upon request, disclose a private record to:
- 805 (i) the subject of the record;
- 806 (ii) the parent or legal guardian of an unemancipated minor who is the subject of the record;
- 808 (iii) the legal guardian of a legally incapacitated individual who is the subject of the record;
- 810 (iv) any other individual who:
- 811 (A) has a power of attorney from the subject of the record;
- 812 (B) submits a notarized release from the subject of the record or the individual's legal representative dated no more than 90 days before the date the request is made; or
- 815 (C) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a health care provider, as defined in Section 26B-8-501, if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or
- 819 (v) any person to whom the record must be provided pursuant to:
- 820 (A) court order as provided in Subsection (7); or
- 821 (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers; and
- 823 (b) may disclose a private record described in Subsections 63G-2-302(1)(j) through (m), without complying with Section 63G-2-206, to another governmental entity for a purpose related to:
- 826 (i) voter registration; or
- 827 (ii) the administration of an election.
- 828 (2)
- (a) Upon request, a governmental entity shall disclose a controlled record to:
- 829 (i) a physician, physician assistant, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of:
- 831 (A) a release from the subject of the record that is dated no more than 90 days prior to the date the request is made; and
- 833 (B) a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and
- 835 (ii) any person to whom the record must be disclosed pursuant to:
- 836 (A) a court order as provided in Subsection (7); or
- 837 (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers.
- 839

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- (b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.
- 842 (3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.
- 845 (4) Upon request, and except as provided in Subsection [~~(11)(b)~~] (10)(b), a governmental entity shall disclose a protected record to:
- 847 (a) the person that submitted the record;
- 848 (b) any other individual who:
- 849 (i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or
- 852 (ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;
- 856 (c) any person to whom the record must be provided pursuant to:
- 857 (i) a court order as provided in Subsection (7); or
- 858 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers; or
- 860 (d) the owner of a mobile home park, subject to the conditions of Subsection 41-1a-116(5).
- 862 (5) Except as provided in Subsection (1)(b), a governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, state, the United States, or a foreign government only as provided by Section 63G-2-206.
- 865 (6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.
- 867 (7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:
- 869 (a) the record deals with a matter in controversy over which the court has jurisdiction;
- 870 (b) the court has considered the merits of the request for access to the record;
- 871 (c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect:
- 873 (i) privacy interests in the case of private or controlled records;

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- 874 (ii) business confidentiality interests in the case of records protected under Subsection 63G-2-305(1),  
875 (2), (40)(a)(ii), or (40)(a)(vi); and
- 876 (iii) privacy interests or the public interest in the case of other protected records;
- 877 (d) to the extent the record is properly classified private, controlled, or protected, the interests favoring  
878 access, considering limitations thereon, are greater than or equal to the interests favoring restriction  
879 of access; and
- 880 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63G-2-201(3)(b),  
881 the court has authority independent of this chapter to order disclosure.
- 882 (8)
- 883 (a) Except as provided in Subsection (8)(d), a governmental entity may disclose or authorize disclosure  
884 of private or controlled records for research purposes if the governmental entity:
- 885 (i) determines that the research purpose cannot reasonably be accomplished without use or  
886 disclosure of the information to the researcher in individually identifiable form;
- 887 (ii) determines that:
- 888 (A) the proposed research is bona fide; and
- 889 (B) the value of the research is greater than or equal to the infringement upon personal privacy;
- 890 (iii)
- 891 (A) requires the researcher to assure the integrity, confidentiality, and security of the records; and
- 892 (B) requires the removal or destruction of the individual identifiers associated with the records as soon  
893 as the purpose of the research project has been accomplished;
- 894 (iv) prohibits the researcher from:
- 895 (A) disclosing the record in individually identifiable form, except as provided in Subsection (8)(b); or
- 896 (B) using the record for purposes other than the research approved by the governmental entity; and
- 897 (v) secures from the researcher a written statement of the researcher's understanding of and  
898 agreement to the conditions of this Subsection (8) and the researcher's understanding that  
899 violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution  
900 under Section 63G-2-801.
- 901 (b) A researcher may disclose a record in individually identifiable form if the record is disclosed for the  
902 purpose of auditing or evaluating the research program and no subsequent use or disclosure of the  
903 record in individually identifiable form will be made by the auditor or evaluator except as provided  
904 by this section.

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- 911 (c) A governmental entity may require indemnification as a condition of permitting research under this  
Subsection (8).
- 913 (d) A governmental entity may not disclose or authorize disclosure of a private record for research  
purposes as described in this Subsection (8) if the private record is a record described in Subsection  
63G-2-302(1)(w).
- 916 [~~9~~]
- (a) ~~Under Subsections 63G-2-201(5)(b) and 63G-2-401(6), a governmental entity may disclose to  
persons other than those specified in this section records that are:]~~
- 918 [~~(i) private under Section 63G-2-302; or]~~
- 919 [~~(ii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for business  
confidentiality has been made under Section 63G-2-309.]~~
- 921 [~~(b) Under Subsection 63G-2-403(11)(b), the State Records Committee may require the disclosure to  
persons other than those specified in this section of records that are:]~~
- 923 [~~(i) private under Section 63G-2-302;]~~
- 924 [~~(ii) controlled under Section 63G-2-304; or]~~
- 925 [~~(iii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for business  
confidentiality has been made under Section 63G-2-309.]~~
- 927 [~~(e) Under Subsection 63G-2-404(7), the court may require the disclosure of records that are private  
under Section 63G-2-302, controlled under Section 63G-2-304, or protected under Section  
63G-2-305 to persons other than those specified in this section.]~~
- 931 [~~(10)~~] (9)
- (a) A private record described in Subsection 63G-2-302(2)(f) may only be disclosed as provided in  
Subsection (1)(a)(v).
- 933 (b) A protected record described in Subsection 63G-2-305(43) may only be disclosed as provided in  
Subsection (4)(c) or Section 26B-6-212.
- 935 [~~(11)~~] (10)
- (a) A private, protected, or controlled record described in Section 26B-1-506 shall be disclosed as  
required under:
- 937 (i) Subsections 26B-1-506(1)(b) and (2); and
- 938 (ii) Subsections 26B-1-507(1) and (6).
- 939



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(b) A record disclosed under Subsection ~~[(11)(a)]~~ (10)(a) shall retain its character as private, protected, or controlled.

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

757 **63G-2-209. Vexatious requester.**

943 (1) As used in this section:

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

945 ~~[(b) "Executive secretary" means an individual appointed as executive secretary under Subsection~~  
946 ~~63G-2-502(3).]~~

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

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

951 (2)

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

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

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

955 ~~[(ii)]~~ contain:

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

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

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

961 ~~[(D)]~~ (iv) a sworn declaration or an unsworn declaration, as those terms are defined in Section  
962 78B-18a-102.

963 (c) On the day the governmental entity files a petition under Subsection (2)(a), the governmental entity  
964 shall send a copy of the petition to the respondent.

965 (3)

(a) Except as provided in Subsection (3)(c), no later than seven business days after receiving the  
966 petition~~[the executive secretary]~~ , the director shall schedule a hearing~~[for the committee]~~ to  
967 consider the petition, to be held:

968 (i)

## SB0277 compared with SB0277S04

- (A) at the next ~~[regularly scheduled committee meeting falling]~~ regularly-scheduled hearing date that is at least 16 calendar days after the ~~[date]~~ day on which the petition is filed but no later than 64 calendar days after the ~~[date]~~ day on which the petition is filed; or
- 973 (B) at a ~~[regularly scheduled committee meeting]~~ regularly-scheduled hearing date that is later than the period described in Subsection (3)(a)(i)(A) if the later ~~[committee meeting]~~ hearing date is the first ~~[regularly scheduled committee meeting]~~ regularly-scheduled hearing date at which there are fewer than 10 appeals scheduled to be heard; or
- 978 (ii) to the extent practicable, at a date sooner than a period described in Subsection (3)(a)(i) if the governmental entity:
- 980 (A) requests an expedited hearing; and
- 981 (B) shows good cause for the expedited hearing.
- 982 (b) If the ~~[executive secretary]~~ director schedules a hearing under Subsection (3)(a), the ~~[executive secretary]~~ director shall:
- 984 [(i) send a copy of the petition to each member of the committee;]
- 985 [(ii) (i) send a copy of the notice of hearing to the governmental entity[;] and the respondent[~~, and each member of the committee~~]; and
- 987 [(iii) (ii) if applicable, send a copy of the respondent's statement under Subsection ~~[(3)(c)(ii)]~~ (3)(c)(ii) ~~(B)~~ to the governmental entity~~[ and each member of the committee]~~.
- 990 [(e)
- (i) ~~The executive secretary may decline to schedule a hearing if:~~
- 991 [(A) the executive secretary recommends that the committee deny the petition without a hearing because the petition does not warrant a hearing;]
- 993 [(B) the executive secretary consults with the chair of the committee and at least one other member of the committee; and]
- 995 [(C) the chair of the committee and all committee members with whom the executive secretary consults under this Subsection (3)(c)(i) agree with the executive secretary's recommendation to deny the petition without a hearing.]
- 998 [(ii) The executive secretary may, in making the determination described in Subsection (3)(c)(i)(A), request that the respondent submit a written response to the petition.]
- 1001 [(d) If the executive secretary declines to schedule a hearing in accordance with Subsection (3)(c):]
- 1003

## SB0277 compared with SB0277S04

- 1006 [(i) the executive secretary shall send a notice to the governmental entity and the respondent indicating  
1007 that the request for a hearing has been denied and the reasons for the denial; and]  
1009 [(ii) the committee shall:]  
1011 [(A) vote at the committee's next regular meeting to accept or reject the recommendation to deny the  
1014 petition without a hearing;]  
1015 [(B) issue an order that includes the reasons for the committee's decision to accept or reject the  
1017 recommendation; and]  
1018 [(C) if the committee rejects the recommendation to deny the petition without a hearing, direct the  
1020 executive secretary to schedule a hearing as provided in Subsection (3)(a).]  
1022 (c) The director may decline to schedule a hearing if:  
1024 (i) the director makes an initial determination that the petition should be denied without a hearing; and  
1026 (ii) before the director makes a final ruling to deny the petition, the director:  
1027 (A) provides the parties with notice of the initial determination described in Subsection (3)(c)(i),  
1029 including the reasons for the initial determination;  
1032 (B) provides the parties with a reasonable opportunity to respond to the initial determination described  
1035 in Subsection (3)(c)(i); and  
1037 (C) provides the respondent with a reasonable opportunity to submit a written response to the petition.  
(d) If, after complying with Subsection (3)(c), the director makes a final ruling denying the petition  
without a hearing, the director shall:  
(i) issue an order denying the petition; and  
(ii) include in the order the reasons for denying the petition and the reasons for making the ruling  
without a hearing.  
(e) If, after complying with Subsection (3)(c), the director determines that a hearing should be held, the  
director shall schedule a hearing in accordance with Subsection (3)(a).  
(4)  
(a) No later than five business days before the day of the hearing, the respondent may submit to the  
[executive secretary] director and the governmental entity a written statement in response to the  
governmental entity's petition.  
(b) The written statement described in Subsection (4)(a) may be the same document as the respondent's  
written response described in Subsection [(3)(e)(ii)] (3)(c)(ii)(C).

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- (5) No later than 10 business days before the day of a hearing under this section, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention with the [eommittee] director as provided in Subsection 63G-2-403(6).
- 1040 (6) If a respondent fails to submit a written statement under Subsection (4) or fails to appear at the hearing, the [eommittee] director shall:
- 1042 (a) cancel the hearing; or
- 1043 (b) hold the hearing in accordance with Subsection (7).
- 1044 (7)
- (a) If the [eommittee] director holds a hearing scheduled under Subsection (3), the [eommittee] director shall:
- 1046 (i) allow the governmental entity to testify, present evidence, and comment on the issues; and
- 1048 (ii) allow the respondent to testify, present evidence, and comment on the issues if the respondent appears at the hearing.
- 1050 (b) At the hearing, the [eommittee] director may allow another interested person to comment on the issues.
- 1052 (c)
- (i) Discovery is prohibited, but the [eommittee] director may issue subpoenas or other orders to compel production of necessary testimony or evidence.
- 1054 (ii) If the subject of a [eommittee] director's subpoena disobeys or fails to comply with the subpoena, the [eommittee] director may file a motion with the district court for an order to compel obedience to the subpoena.
- 1057 (8)
- (a) No later than seven business days after the day on which a hearing is held as scheduled under Subsection (3) or the date on which a hearing cancelled under Subsection (6) was scheduled to be held, the [eommittee] director shall:
- 1060 (i) determine, in accordance with Subsection (9), whether the governmental entity has demonstrated that the respondent is a vexatious requester; and
- 1062 (ii) issue a signed order that grants or denies the petition in whole or in part.
- 1063 (b) Upon granting the petition in whole or in part, the [eommittee] 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.

## SB0277 compared with SB0277S04

- 1067 (c) The [eommittee's] director's order shall contain:
- 1068 (i) a statement of the reasons for the [eommittee's-] director's decision;
- 1069 (ii) if the petition is granted in whole or in part, a specific description of the conduct the  
[eommittee] director determines demonstrates that the respondent is a vexatious requester,  
including any conduct the [eommittee] 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;
- 1074 (iii) a statement that the respondent or governmental entity may seek judicial review of the  
[eommittee's] director's decision in district court as provided in Section 63G-2-404; and
- 1077 (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 [eommittee's] director's decision may wish to seek advice from an  
attorney.
- 1081 (9) In determining whether a governmental entity has demonstrated that the respondent is a vexatious  
requester, the [eommittee] director shall consider:
- 1083 [~~(a) the interests described in Section 63G-2-102;~~]
- 1084 [~~(b)~~] (a) as applicable:
- 1085 (i) the number of requests the respondent has submitted to the governmental entity, including the  
number of pending record requests;
- 1087 (ii) the scope, nature, content, language, and subject matter of record requests the respondent has  
submitted to the governmental entity;
- 1089 (iii) the nature, content, language, and subject matter of any communications to the governmental entity  
related to a record request of the respondent; and
- 1091 (iv) any pattern of conduct that the [eommittee] director determines to constitute:
- 1092 (A) an abuse of the right of access to information under this chapter; or
- 1093 (B) substantial interference with the operations of the governmental entity; and
- 1094 [~~(e)~~] (b) any other factor the [eommittee] director considers relevant.
- 1095 (10)
- (a) A governmental entity or respondent aggrieved by the [eommittee's] director's decision under this  
section may seek judicial review of the decision as provided in Section 63G-2-404.

1098

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(b) In a judicial review under Subsection (10)(a), the court may award reasonable attorney fees to a respondent if:

1100 (i) the respondent substantially prevails; and

1101 (ii) the court determines that:

1102 (A) the petition filed by the governmental entity under Subsection (2) is without merit; and

1104 (B) the governmental entity's actions in filing the petition lack a reasonable basis in fact or law.

1106 (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.

1109 (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.

1112 (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.

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

931 **63G-2-309. Confidentiality claims.**

1117 (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:

1120 (A) a written claim of business confidentiality; and

1121 (B) a concise statement of reasons supporting the claim of business confidentiality.

1122 (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:

1128 (A) a person;

1129 (B) a federal governmental entity;

1130 (C) a state governmental entity; or

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- 1131 (D) a local governmental entity.
- 1132 (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 ~~{(F)}~~
- 1134 ~~{(i)}~~ - a record claimed to be protected under one of the following is classified public:
- 1135 ~~{(A)}~~ ~~{(i)}~~ Subsection 63G-2-305(1);
- 1136 ~~{(B)}~~ ~~{(ii)}~~ Subsection 63G-2-305(2);
- 1137 ~~{(C)}~~ ~~{(iii)}~~ Subsection 63G-2-305(40)(a)(ii);
- 1138 ~~{(D)}~~ ~~{(iv)}~~ Subsection 63G-2-305(40)(a)(vi); or
- 1139 ~~{(E)}~~ ~~{(v)}~~ a combination of the provisions described in Subsections ~~{(1)(b)(i)(A) through (D)}~~  
~~or~~ ~~(1)(b)(i) through (iv).~~
- 1141 ~~{(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).~~}~~
- 1145 (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.
- 1150 (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)}~~ ~~(1)(b)}~~ 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.
- 1156 (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.
- 1159 (3) Disclosure or acquisition of information under this chapter does not constitute misappropriation  
under Subsection 13-24-2(2).
- 977 Section 14. Section **63G-2-400.5** is amended to read:

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978           **63G-2-400.5. Definitions.**

As used in this part:

- 1164 (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.
- 1166 (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.
- 1168 (3) "Director" means the director of the Government Records Office.
- 1169 [(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.
- 1172 [(4)] (5) "Local appeals board" means an appeals board established by a political subdivision under  
Subsection 63G-2-701(5)(c).
- 1174 [(5)] (6) "Record request" means a request for a record under Section 63G-2-204.
- 1175 [(6)] (7) "Records[~~committee~~] appellant" means:
- 1176 (a) a political subdivision that seeks to appeal a decision of a local appeals board to the [~~State Records  
Committee~~] director; or
- 1178 (b) a requester or interested party who seeks to appeal to the [~~State Records Committee~~] director a  
decision affirming an access denial.
- 1180 [(7)] (8) "Requester" means a person who submits a record request to a governmental entity.

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

998           **63G-2-401. Appeal to chief administrative officer -- Notice of the decision of the appeal.**

- 1184 (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:
- 1188 (i) for an access denial:
- 1189 (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
- 1192 (B) the record request is considered denied under Subsection 63G-2-204(9), if that subsection applies;  
or

1194



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- (ii) for a denial of a fee waiver, the date the governmental entity notifies the requester that the fee waiver is denied.
- 1196 (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).
- 1205 (2) A notice of appeal shall contain:
- 1206 (a) the name, mailing address, and daytime telephone number of the requester or interested party; and
- 1208 (b) the relief sought.
- 1209 (3) The requester or interested party may file a short statement of facts, reasons, and legal authority in support of the appeal.
- 1211 (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:
- 1213 (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
- 1217 (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.
- 1220 (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.
- 1223 (5)
- (a) The chief administrative officer shall make a decision on the appeal within:
- 1224 (i)
- (A) 10 business days after the chief administrative officer's receipt of the notice of appeal; or
- 1226

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- (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
- 1229 (ii) 12 business days after the governmental entity sends the notice of appeal to a person who  
submitted a claim of business confidentiality.
- 1231 (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.
- 1234 (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.
- 1238 (c) The provisions of this section notwithstanding, the parties participating in the proceeding may, by agreement, extend the time periods specified in this section.
- 1240 ~~{(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.}}
- 1246 ~~{(7){}}~~ ~~{(6){}}~~
- (a) The governmental entity shall send written notice of the chief administrative officer's decision to all participants.
- 1248 (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){}}~~ ~~{(6)(a)}~~ shall include:
- 1251 (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;
- 1255 (ii) a statement that the requester or interested party has the right to appeal the decision, as provided in Section 63G-2-402, to:
- 1257 (A) the ~~[State Records Committee]~~ director or district court; or

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- 1258 (B) the local appeals board, if the governmental entity is a political subdivision and the governmental  
entity has established a local appeals board;
- 1260 (iii) the time limits for filing an appeal described in Subsection ~~{(7)(b)(ii)}~~ ~~{(6)(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
- 1264 (iv) the name and business address of:
- 1265 ~~[(A) the executive secretary of the State Records Committee;]~~
- 1266 (A) the director;
- 1267 (B) the individual designated as the contact individual for the appeals board, if the governmental entity  
is a political subdivision that has established an appeals board under Subsection 63G-2-701(5)(c);  
and
- 1270 (C) the government records ombudsman.
- 1271 ~~{(8)}~~ ~~{(7)}~~
- (a) A person aggrieved by a governmental entity's classification or designation determination under this  
chapter, but who is not requesting access to the records, may appeal that determination using the  
procedures provided in this section.
- 1274 (b) If a nonrequester is the only appellant, the procedures provided in this section shall apply, except  
that the decision on the appeal shall be made within 30 days ~~[after receiving]~~ after the day on which  
the appellant files the notice of appeal.
- 1277 ~~{(9)}~~ ~~{(8)}~~ 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.**
- 1280 (1) If the decision of the chief administrative officer of a governmental entity under Section 63G-2-401  
is to affirm the denial of a record request or to affirm the denial of a fee waiver, the requester may:
- 1283 (a)
- (i) appeal the decision to the ~~[State Records Committee]~~ director, as provided in Section 63G-2-403; or
- 1285 (ii) petition for judicial review of the decision in district court, as provided in Section 63G-2-404;
- 1287 (b) seek mediation of the access denial or fee waiver denial under Subsection ~~[63A-12-111(2)~~  
~~(e)]~~ 63A-12-204(1)(a)(iii); or
- 1289 (c) appeal the decision to the local appeals board if:

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- 1290 (i) the decision is of a chief administrative officer of a governmental entity that is a political  
subdivision; and
- 1292 (ii) the political subdivision has established a local appeals board.
- 1293 (2) A requester who appeals a chief administrative officer's decision to the [~~State Records  
Committee~~] director or a local appeals board does not lose or waive the right to seek judicial review  
of the decision of the [~~State Records Committee~~] director or the local appeals board.
- 1297 (3) As provided in Section 63G-2-403, an interested party may appeal to the [~~State Records  
Committee~~] director of the Government Records Office a chief administrative officer's decision  
under Section 63G-2-401 affirming an access denial.
- 1117 Section 17. Section **63G-2-403** is amended to read:
- 1118 **63G-2-403. Appeals to the director of the Government Records Office.**
- 1302 (1)
- (a) A records [committee ]appellant appeals to the [State Records Committee]director by filing a notice  
of appeal with the [executive secretary of the State Records Committee]director no later than 30  
days after [the date of issuance of]the day on which the decision being appealed is issued.
- 1306 (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 after the day on which the  
record request is made if:
- 1309 (i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and
- 1310 (ii) the chief administrative officer fails to make a decision under Section 63G-2-401.
- 1311 (c) The time for a requester to file a notice of appeal under Subsection (1)(a) or (b) is suspended for the  
period of time that:
- 1313 (i) begins on the date the requester submits a request under Section [63A-12-111]63A-12-204 for the  
government records ombudsman to mediate the dispute between the requester and the governmental  
entity; and
- 1316 (ii) ends the earlier of the following dates:
- 1317 (A) the date that the government records ombudsman certifies in writing that the mediation is  
concluded; or
- 1319 (B) the date that the government records ombudsman certifies in writing that the mediation did not  
occur or was not concluded because of a lack of the required consent.
- 1322 (2) The notice of appeal shall:

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- 1323 (a) contain the name, mailing address, and daytime telephone number of the records  
[committee ]appellant;
- 1325 (b) be accompanied by a copy of the decision being appealed; and
- 1326 (c) state the relief sought.
- 1327 (3) The records [committee ]appellant:
- 1328 (a) shall, on the day on which the notice of appeal is filed with the [State Records Committee]director,  
serve a copy of the notice of appeal on:
- 1330 (i) the governmental entity whose access denial or fee waiver denial is the subject of the appeal, if the  
records [committee ]appellant is a requester or interested party; or
- 1332 (ii) the requester or interested party who is a party to the local appeals board proceeding that resulted  
in the decision that the political subdivision is appealing to the [committee]director, if the records  
[committee ]appellant is a political subdivision; and
- 1336 (b) may file a short statement of facts, reasons, and legal authority in support of the appeal.
- 1338 (4)
- (a) Except as provided in Subsections (4)(b) and (c), no later than seven business days after receiving a  
notice of appeal, the [executive secretary of the State Records Committee]director shall:
- 1341 (i) ~~schedule a hearing for the [State Records Committee]director to discuss the appeal at the next  
regularly scheduled [committee meeting falling]hearing date that is at least 16 calendar days  
after the date the notice of appeal is filed but no [longer ]later than 64 calendar days after the  
date the notice of appeal [was ]is filed, except that the [committee ]director may schedule an  
expedited hearing upon application of the records [committee ]appellant and good cause shown;~~
- 1347 (ii) ~~send a copy of the notice of hearing to the records [committee ]appellant; and~~
- 1348 (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing to:
- 1350 [~~(A) each member of the State Records Committee;~~]
- 1351 [~~(B)~~] (A) the records officer and the chief administrative officer of the governmental entity whose  
access denial is the subject of the appeal, if the records [committee ]appellant is a requester or  
interested party;
- 1354 [~~(C)~~] (B) any person who made a business confidentiality claim under Section 63G-2-309 for a record  
that is the subject of the appeal; and
- 1356

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

1359

(b)

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

1364

(ii)

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

1368

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

1370

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

1376

(5)

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

1380

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

1384

(6)

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

1388

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- (b) Any written statement of facts, reasons, and legal authority in support of the intervener's position shall be filed with the request for intervention.
- 1390 (c) The person seeking intervention shall provide copies of the statement described in Subsection (6)(b) to all parties to the proceedings before the [State Records Committee]director.
- 1210 (7)
- 1393 (a) {~~(7)~~ The [State Records Committee ]director shall hold a hearing within the period of time described in Subsection (4).
- 1212 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules requiring that a hearing under this section is open to the public in substantially the same manner as a meeting under Title 52, Chapter 4, Open and Public Meetings Act.
- 1395 (8) At the hearing, the [State Records Committee ]director:
- 1396 (a) shall allow the parties to testify, present evidence, and comment on the issues[. The committee ]:  
and
- 1398 (b) may allow other interested persons to comment on the issues.
- 1399 (9)
- (a)
- (i) The [State Records Committee]director:
- 1400 (A) may review the disputed records; and
- 1401 (B) shall review the disputed records, if the [committee ]director is weighing the various interests under Subsection (11).
- 1403 (ii) A review of the disputed records under Subsection (9)(a)(i) shall be in camera.
- 1404 (b) [Members of the State Records Committee ]The director may not disclose any information or record reviewed by the [committee ]director in camera unless the disclosure is otherwise authorized by this chapter.
- 1407 (10)
- (a) Discovery is prohibited, but the [State Records Committee ]director may issue subpoenas or other orders to compel production of necessary evidence.
- 1409 (b) When the subject of a [State Records Committee ]subpoena issued by the director disobeys or fails to comply with the subpoena, the [committee ]director may file a motion for an order to compel obedience to the subpoena with the district court.
- 1412 (c)

## SB0277 compared with SB0277S04

(i) The [State Records Committee's ]director's review shall be de novo, if the appeal is an appeal from a decision of a chief administrative officer:

1414 (A) issued under Section 63G-2-401; or

1415 (B) issued by a chief administrative officer of a political subdivision that has not established a local appeals board.

1417 (ii) For an appeal from a decision of a local appeals board, the [State Records Committee ]director shall review and consider the decision of the local appeals board.

1420 (11)

~~{{(a)}} No later than seven business days after the day of the hearing, the [State Records Committee ]director shall issue a signed order:~~

1422 ~~{{(i)}} {{(a)}} granting the relief sought, in whole or in part; or~~

1423 ~~{{(ii)}} {{(b)}} upholding the governmental entity's access denial, in whole or in part.~~

1424 ~~{{(b)}} Except as provided in Section 63G-2-406, the [State Records Committee ]director 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, controlled, or protected if the public interest favoring access is greater than or equal to the interest favoring restriction of access.}}~~

1429 ~~{{(c)}} In making a determination under Subsection (11)(b), the [State Records Committee ]director shall consider and, where appropriate, limit the requester's or interested party's use and further disclosure of the record in order to protect:}}~~

1432 ~~{{(i)} privacy interests in the case of a private or controlled record;}}~~

1433 ~~{{(ii)} business confidentiality interests in the case of a record protected under Subsection 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and}}~~

1435 ~~{{(iii)} privacy interests or the public interest in the case of other protected records.}}~~

1436 (12) The order of the [State Records Committee ]director shall include:

1437 (a) a statement of reasons for the decision, including citations to this chapter, court rule or order, another state statute, federal statute, or federal regulation that governs disclosure of the record, if the citations do not disclose private, controlled, or protected information;

1441 (b) a description of the record or portions of the record to which access [was ]is ordered or denied, if the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);



## SB0277 compared with SB0277S04

- 1444 (c) a statement that any party to the proceeding before the [State Records Committee ]director may  
1446 appeal the [committee's ]director's decision to district court; and
- 1449 (d) a brief summary of the appeals process, the time limits for filing an appeal, and a notice that in order  
to protect its rights on appeal, the party may wish to seek advice from an attorney.
- 1449 (13)
- ~~(a) If the [State Records Committee ]director fails to issue a decision within 73 calendar days after the  
day of the filing of the notice of appeal, that failure is the equivalent of an order denying the appeal.  
†~~
- 1452 (b) A records [committee ]appellant shall notify the [State Records Committee ]director in writing if the  
records [committee ]appellant considers the appeal denied.
- 1454 (14) A party to a proceeding before the [State Records Committee ]director may seek judicial review  
in district court of a [State Records Committee ]director's order by filing a petition for review of the  
order as provided in Section 63G-2-404.
- 1457 (15)
- (a) Unless a notice of intent to appeal is filed under Subsection (15)(b), each party to the proceeding  
shall comply with the order of the [State Records Committee]director.
- 1459 (b) If a party disagrees with the order of the [State Records Committee]director, that party may file a  
notice of intent to appeal the order.
- 1461 (c) If the [State Records Committee ]director orders the governmental entity to produce a record and  
no appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a  
record, the governmental entity shall:
- 1464 (i) produce the record; and
- 1465 (ii) file a notice of compliance with the [committee]director.
- 1466 (d)
- (i) If the governmental entity that is ordered to produce a record fails to file a notice of compliance  
or a notice of intent to appeal, the [State Records Committee ]director may do either or both of the  
following:
- 1469 (A) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or
- 1471 (B) send written notice of the governmental entity's noncompliance to the governor.
- 1473

## SB0277 compared with SB0277S04

- (ii) In imposing a civil penalty, the [State Records Committee ]director shall consider the gravity and circumstances of the violation, including whether the failure to 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.**

1478 (1)

- (a) A petition for judicial review of an order or decision, as allowed under this part, in Section 63G-2-209, or in Subsection 63G-2-701(6)(a)(ii), shall be filed no later than 30 days after the date of the order or decision, subject to Subsection (1)(b).

1481 (b) The time for a requester to file a petition for judicial review under Subsection (1)(a) is suspended for the period of time that:

1483 (i) begins the date the requester submits a request under Section [~~63A-12-111~~] 63A-12-204 for the government records ombudsman to mediate the dispute between the requester and the governmental entity; and

1486 (ii) ends the earlier of the following dates:

1487 (A) the date that the government records ombudsman certifies in writing that the mediation is concluded; or

1489 (B) the date that the government records ombudsman certifies in writing that the mediation did not occur or was not concluded because of a lack of the required consent.

1492 (2)

- (a) A petition for judicial review is a complaint governed by the Utah Rules of Civil Procedure and shall contain:

1494 (i) the petitioner's name and mailing address;

1495 (ii) a copy of the [~~State Records Committee~~] director's order from which the appeal is taken, if the petitioner is seeking judicial review of an order of the [~~State Records Committee~~] director;

1498 (iii) the name and mailing address of the governmental entity that issued the initial determination with a copy of that determination;

1500 (iv) a request for relief specifying the type and extent of relief requested; and

1501 (v) a statement of the reasons why the petitioner is entitled to relief.

1502 (b) Except in exceptional circumstances, a petition for judicial review may not raise an issue that was not raised in the underlying appeal and order.

## SB0277 compared with SB0277S04

- 1504 (3) If the appeal is based on the denial of access to a protected record based on a claim of business confidentiality, the court shall allow the claimant of business confidentiality to provide to the court the reasons for the claim of business confidentiality.
- 1507 (4) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.
- 1509 (5)
- 1510 (a) The district court may review the disputed records.~~[-The]~~
- 1511 (b) A review described in Subsection (5)(a) shall be in camera.
- 1512 (6)
- 1512 (a) The court shall:
- 1515 (i) make the court's decision de novo, but, for a petition seeking judicial review of a ~~[State Records Committee]~~ director's order, allow introduction of evidence presented to the ~~[State Records Committee]~~ director;
- 1516 (ii) determine all questions of fact and law without a jury; and
- 1517 (iii) decide the issue at the earliest practical opportunity.
- 1517 (b) A court may remand a petition for judicial review to the ~~[State Records Committee]~~ director if:
- 1519 (i) the remand is to allow the ~~[State Records Committee]~~ director to decide an issue that:
- 1521 (A) involves access to a record; and
- 1522 (B) the ~~[State Records Committee has not previously addressed]~~ director did not address in the proceeding that led to the petition for judicial review; and
- 1524 (ii) the court determines that remanding to the ~~[State Records Committee]~~ director is in the best interests of justice.
- 1526 ~~{(7)}~~
- ~~{(a) Except as provided in Section 63G-2-406, the court 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, controlled, or protected if the interest favoring access is greater than or equal to the interest favoring restriction of access.}~~
- 1531 ~~{(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.}~~

## SB0277 compared with SB0277S04

1536 ~~{Section 20. Section 63G-2-405 is amended to read: }~~

1537 **63G-2-405. Confidential treatment of records for which no exemption applies.**

1538 (1) A court may, on appeal or in a declaratory or other action, order the confidential treatment of  
records for which no exemption from disclosure applies if[;]

1540 [~~(a)~~] ~~\_there are compelling interests favoring restriction of access to the record[; and] \_~~

1541 [~~(b) the interests favoring restriction of access clearly are greater than or equal to the interests favoring  
access.~~]

1543 (2) If a governmental entity requests a court to restrict access to a record under this section, the court  
shall require the governmental entity to pay the reasonable attorney fees and costs incurred by the  
lead party in opposing the governmental entity's request, if:

1546 (a) the court finds that no statutory or constitutional exemption from disclosure could reasonably apply  
to the record in question; and

1548 (b) the court denies confidential treatment under this section.

1549 (3) This section does not apply to records that are specifically required to be public under statutory  
provisions outside of this chapter or under Section 63G-2-301, except as provided in Subsection (4).

1552 (4)

(a) Access to drafts and empirical data in drafts may be limited under this section, but the court may  
consider, in its evaluation of interests favoring restriction of access, only those interests that relate to  
the underlying information, and not to the deliberative nature of the record.

1556 (b) Access to original data in a computer program may be limited under this section, but the court may  
consider, in its evaluation of interests favoring restriction of access, only those interests that relate to  
the underlying information, and not to the status of that data as part of a computer program.

1560 (5) Except for the waiver of immunity in Subsection 63G-7-301(2)(e), a claim for attorney fees or costs  
under this section is not subject to Chapter 7, Governmental Immunity Act of Utah.

1360 Section 19. Section **63G-2-701** is amended to read:

1361 **63G-2-701. Political subdivisions may adopt ordinances in compliance with chapter --**

### **Appeal process.**

1566 (1) As used in this section:

1567 (a) "Access denial" means the same as that term is defined in Section 63G-2-400.5.

1568 (b) "Interested party" means the same as that term is defined in Section 63G-2-400.5.

1569 (c) "Requester" means the same as that term is defined in Section 63G-2-400.5.

## SB0277 compared with SB0277S04

- 1570 (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.
- 1574 (b) The ordinance or policy shall comply with the criteria set forth in this section.
- 1575 (c) If any political subdivision does not adopt and maintain an ordinance or policy, then that political subdivision is subject to this chapter.
- 1577 (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.
- 1581 (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.
- 1583 (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.
- 1586 (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).
- 1592 (3) Each ordinance or policy relating to information practices shall:
- 1593 (a) provide standards for the classification and designation of the records of the political subdivision as public, private, controlled, or protected in accordance with Part 3, Classification;
- 1596 (b) require the classification of the records of the political subdivision in accordance with those standards;
- 1598 (c) provide guidelines for establishment of fees in accordance with Section 63G-2-203; and
- 1600 (d) provide standards for the management and retention of the records of the political subdivision comparable to Section 63A-12-103.
- 1602 (4)
- (a) Each ordinance or policy shall establish access criteria, procedures, and response times for requests to inspect, obtain, or amend records of the political subdivision, and time limits for appeals consistent with this chapter.

## SB0277 compared with SB0277S04

- 1605 (b) In establishing response times for access requests and time limits for appeals, the political  
subdivision may establish reasonable time frames different than those set out in Section 63G-2-204  
and Part 4, Appeals, if it determines that the resources of the political subdivision are insufficient to  
meet the requirements of those sections.
- 1609 (5)
- (a) A political subdivision shall establish an appeals process for persons aggrieved by classification,  
designation, or access decisions.
- 1611 (b) A political subdivision's appeals process shall include a process for a requester or interested  
party to appeal an access denial to a person designated by the political subdivision as the chief  
administrative officer for purposes of an appeal under Section 63G-2-401.
- 1615 (c)
- (i) A political subdivision may establish an appeals board to decide an appeal of a decision of the chief  
administrative officer affirming an access denial.
- 1617 (ii) An appeals board established by a political subdivision shall be composed of three members:
- 1619 (A) one of whom shall be an employee of the political subdivision; and
- 1620 (B) two of whom shall be members of the public who are not employed by or officials of a  
governmental entity, at least one of whom shall have professional experience with requesting or  
managing records.
- 1623 (iii) If a political subdivision establishes an appeals board, any appeal of a decision of a chief  
administrative officer shall be made to the appeals board.
- 1625 (iv) If a political subdivision does not establish an appeals board, the political subdivision's appeals  
process shall provide for an appeal of a chief administrative officer's decision to the [~~State Records  
Committee~~] director of the Government Records Office, as provided in Section 63G-2-403.
- 1629 (6)
- (a) A political subdivision or requester may appeal an appeals board decision:
- 1630 (i) to the [~~State Records Committee~~] director of the Government Records Office, as provided in  
Section 63G-2-403; or
- 1632 (ii) by filing a petition for judicial review with the district court.
- 1633 (b) The contents of a petition for judicial review under Subsection (6)(a)(ii) and the conduct of the  
proceeding shall be in accordance with Sections 63G-2-402 and 63G-2-404.
- 1636

## SB0277 compared with SB0277S04

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

1640 (7) Any political subdivision that adopts an ordinance or policy under Subsection (1) shall 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.**

1644 (1) The judiciary is subject to the provisions of this chapter except as provided in this section.

1646 (2)

(a) The judiciary is not subject to:

1647 (i) Section 63G-2-209; or

1648 (ii) Part 4, Appeals, except as provided in Subsection (6).

1649 (b) The judiciary is not subject to [~~Part 5, State Records Committee, and~~] Title 63A, Chapter 12, Part 2,  
Government Records Office, or Part 6, Collection of Information and Accuracy of Records.

1652 (c) The judiciary is subject to only the following sections in Part 9, Public Associations: Sections  
63A-12-105 and 63A-12-106.

1654 (3) The Judicial Council, the Administrative Office of the Courts, the courts, and other administrative  
units in the judicial branch shall designate and classify their records in accordance with Sections  
63G-2-301 through 63G-2-305.

1657 (4) Substantially consistent with the provisions of this chapter, the Judicial Council shall:

1658 (a) make rules governing requests for access, fees, classification, designation, segregation, management,  
retention, denials and appeals of requests for access and retention, and amendment of judicial  
records;

1661 (b) establish an appellate board to handle appeals from denials of requests for access and provide that a  
requester who is denied access by the appellate board may file a lawsuit in district court; and

1664 (c) provide standards for the management and retention of judicial records substantially consistent with  
Section 63A-12-103.

1666 (5) The Judicial Council may:

1667 (a) establish a process for an administrative unit of the judicial branch to petition for relief from a  
person that the administrative unit claims is a vexatious requester; and

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- (b) establish an appellate board to hear a petition for relief from a person that an administrative unit of the judicial branch claims is a vexatious requester.
- 1671 (6) Rules governing appeals from denials of requests for access shall substantially comply with the time limits provided in Section 63G-2-204 and Part 4, Appeals.
- 1673 (7) Upon request, the state archivist shall:
- 1674 (a) assist with and advise concerning the establishment of a records management program in the judicial branch; and
- 1676 (b) as required by the judiciary, provide program services similar to those available to the executive and legislative branches of government as provided in this chapter and Title 63A, Chapter 12, Division of Archives and Records Service and Management of Government Records.
- 1477 Section 21. Section **63G-2-703** is amended to read:
- 1478 **63G-2-703. Applicability to the Legislature.**
- 1682 (1) The Legislature and its staff offices shall designate and classify records in accordance with Sections 63G-2-301 through 63G-2-305 as public, private, controlled, or protected.
- 1684 (2)
- (a) The Legislature and its staff offices are not subject to:
- 1685 (i) Section 63G-2-203 or 63G-2-209; or
- 1686 (ii) Part 4, Appeals, [~~Part 5, State Records Committee~~] Title 63A, Chapter 12, Part 2, Government Records Office, or Part 6, Collection of Information and Accuracy of Records.
- 1689 (b) The Legislature is subject to only the following sections in Title 63A, Chapter 12, Division of Archives and Records Service and Management of Government Records:[~~Sections~~]
- 1692 (i) Section 63A-12-102[~~;~~] ;
- 1693 (ii) Section 63A-12-102.5[~~;~~] ; and[~~;~~]
- 1694 (iii) Section 63A-12-106.
- 1695 (3) The Legislature, through the Legislative Management Committee:
- 1696 (a)
- (i) shall establish policies to handle requests for classification, designation, fees, access, denials, segregation, appeals, management, retention, and amendment of records; and
- 1699 (ii) may establish an appellate board to hear appeals from denials of access; and
- 1700 (b) may establish:
- 1701



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- 1704 (i) a process for determining that a person is a vexatious requester, including a process for an appeal  
1705 from a determination that a person is a vexatious requester; and
- 1707 (ii) appropriate limitations on a person determined to be a vexatious requester.
- 1708 (4) Policies shall include reasonable times for responding to access requests consistent with the  
1710 provisions of Part 2, Access to Records, fees, and reasonable time limits for appeals.
- 1710 (5) Upon request, the state archivist shall:
  - 1718 (a) assist with and advise concerning the establishment of a records management program in the  
1710 Legislature; and
  - 1710 (b) as required by the Legislature, provide program services similar to those available to the executive  
1710 branch of government, as provided in this chapter and Title 63A, Chapter 12, Division of Archives  
1710 and Records Service and Management of 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 lieutenant  
1513 governor shall designate and classify records in accordance with Sections 63G-2-301 through  
1513 63G-2-305 as public, private, controlled, or protected.
- 1516 (2)
  - 1516 (a) The governor, the office of the governor, the lieutenant governor, and the office of the lieutenant  
1516 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 the lieutenant  
1522 governor are subject to only the following sections in Title 63A, Chapter 12, Division of Archives  
1522 and Records Service and Management of Government Records:
    - 1526 (i) Section 63A-12-102; and
    - 1527 (ii) Section 63A-12-106.
- 1528 (3) The governor and lieutenant governor:
  - 1529 (a)

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- (i) shall establish policies to handle requests for classification, designation, fees, access, denials, segregation, appeals to the chief administrative officer, 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 process for an appeal from a determination that a person is a vexatious requester; 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 access requests consistent with the provisions of Part 2, Access to Records, fees, and 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 program for the governor, the office of the governor, the lieutenant governor, and the office of the lieutenant governor; and
- 1545 (b) as required by the governor or lieutenant governor, provide program services as provided in this chapter and Title 63A, Chapter 12, Division of Archives and Records Service and Management of Government Records.
- 1548 (6) An individual in an executive branch management position, as defined in Section 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 under Subsection (3)(a).
- 1553 Section 23. Section **63G-2-801** is amended to read:
- 1554 **63G-2-801. Criminal penalties.**
- 1716 (1)
- (a) A public employee or other person who has lawful access to any private, controlled, or protected record under this chapter, and who intentionally discloses, provides a copy of, or improperly uses a private, controlled, or protected record 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.
- 1721 (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

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information was necessary to expose a violation of law involving government corruption, abuse of office, or misappropriation of public funds or property.

- 1726 (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.
- 1728 (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.
- 1731 (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.
- 1734 (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.
- 1737 (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.
- 1739 (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.
- 1742 (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.
- 1585 Section 24. Section **63H-1-202** is amended to read:
- 1586 **63H-1-202. Applicability of other law.**
- 1748 (1) As used in this section:
- 1749 (a) "Subsidiary" means an authority subsidiary that is a public body as defined in Section 52-4-103.
- 1751 (b) "Subsidiary board" means the governing body of a subsidiary.
- 1752 (2) The authority or land within a project area is not subject to:
- 1753 (a) Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act;
- 1754 (b) Title 17, Chapter 27a, County Land Use, Development, and Management Act;

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- 1755 (c) ordinances or regulations of a county or municipality, including those relating to land use, health, business license, or franchise; or
- 1757 (d) the jurisdiction of a special district under Title 17B, Limited Purpose Local Government Entities - Special Districts, or a special service district under Title 17D, Chapter 1, Special Service District Act.
- 1760 (3) The authority is subject to and governed by Sections 63E-2-106, 63E-2-107, 63E-2-108, 63E-2-109, 63E-2-110, and 63E-2-111, but is not otherwise subject to or governed by Title 63E, Independent Entities Code.
- 1763 (4)
- (a) The definitions in Section 57-8-3 apply to this Subsection (4).
- 1764 (b) Notwithstanding the provisions of Title 57, Chapter 8, Condominium Ownership Act, or any other provision of law:
- 1766 (i) if the military is the owner of land in a project area on which a condominium project is constructed, the military is not required to sign, execute, or record a declaration of a condominium project; and
- 1769 (ii) if a condominium unit in a project area is owned by the military or owned by the authority and leased to the military for \$1 or less per calendar year, not including any common charges that are reimbursements for actual expenses:
- 1772 (A) the condominium unit is not subject to any liens under Title 57, Chapter 8, Condominium Ownership Act;
- 1774 (B) condominium unit owners within the same building or commercial condominium project may agree on any method of allocation and payment of common area expenses, regardless of the size or par value of each unit; and
- 1777 (C) the condominium project may not be dissolved without the consent of all the condominium unit owners.
- 1779 (5) Notwithstanding any other provision, when a law requires the consent of a local government, the authority is the consenting entity for a project area.
- 1781 (6)
- (a) A department, division, or other agency of the state and a political subdivision of the state shall cooperate with the authority to the fullest extent possible to provide whatever support, information, or other assistance the authority requests that is reasonably necessary to help the authority fulfill the authority's duties and responsibilities under this chapter.

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- 1786 (b) Subsection (6)(a) does not apply to a political subdivision that does not have any of a project area  
located within the boundary of the political subdivision.
- 1788 (7)
- (a) The authority and a subsidiary are subject to Title 52, Chapter 4, Open and Public Meetings Act,  
except that:
- 1790 (i) notwithstanding Section 52-4-104, the timing and nature of training to authority board members  
or subsidiary board members on the requirements of Title 52, Chapter 4, Open and Public  
Meetings Act, may be determined by:
- 1793 (A) the board chair, for the authority board; or
- 1794 (B) the subsidiary board chair, for a subsidiary board;
- 1795 (ii) authority staff may adopt a rule governing the use of electronic meetings under Section  
52-4-207, if, under Subsection 63H-1-301(3), the board delegates to authority staff the power to  
adopt the rule; and
- 1798 (iii) for an electronic meeting of the authority board or subsidiary board that otherwise complies  
with Section 52-4-207, the authority board or subsidiary board, respectively:
- 1801 (A) is not required to establish an anchor location; and
- 1802 (B) may convene and conduct the meeting without the determination otherwise required under  
Subsection 52-4-207(5)(a)(i).
- 1804 (b) The authority and subsidiaries are not required to physically post notice notwithstanding any other  
provision of law.
- 1806 (8) The authority and a subsidiary are subject to Title 63G, Chapter 2, Government Records Access and  
Management Act, except that:
- 1808 (a) notwithstanding Section 63G-2-701:
- 1809 (i) the authority may establish an appeals board consisting of at least three members;
- 1810 (ii) an appeals board established under Subsection (8)(a)(i) shall include:
- 1811 (A) one of the authority board members appointed by the governor;
- 1812 (B) the authority board member appointed by the president of the Senate; and
- 1813 (C) the authority board member appointed by the speaker of the House of Representatives; and
- 1815 (iii) an appeal of a decision of an appeals board is to district court, as provided in Section 63G-2-404,  
except that the ~~[State Records Committee is not a party]~~ Government Records Office and the  
director of the Government Records Office are not parties; and

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- 1819 (b) a record created or retained by the authority or a subsidiary acting in the role of a facilitator under Subsection 63H-1-201(3)(v) is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.
- 1822 (9) The authority or a subsidiary acting in the role of a facilitator under Subsection 63H-1-201(3)(v) is not prohibited from receiving a benefit from a public-private partnership that results from the facilitator's work as a facilitator.
- 1825 (10)
- (a)
- (i) A subsidiary created as a public infrastructure district under Title 17D, Chapter 4, Public Infrastructure District Act, may, subject to limitations of Title 17D, Chapter 4, Public Infrastructure District Act, levy a property tax for the operations and maintenance of the public infrastructure district's financed infrastructure and related improvements, subject to a maximum rate of .015.
- 1830 (ii) A levy under Subsection (10)(a)(i) may be separate from a public infrastructure district property tax levy for a bond.
- 1832 (b) If a subsidiary created as a public infrastructure district issues a bond:
- 1833 (i) the subsidiary may:
- 1834 (A) delay the effective date of the property tax levy for the bond until after the period of capitalized interest payments; and
- 1836 (B) covenant with bondholders not to reduce or impair the property tax levy; and
- 1837 (ii) notwithstanding a provision to the contrary in Title 17D, Chapter 4, Public Infrastructure District Act, the tax rate for the property tax levy for the bond may not exceed a rate that generates more revenue than required to pay the annual debt service of the bond plus administrative costs, subject to a maximum of .02.
- 1841 (c)
- (i) A subsidiary created as a public infrastructure district under Title 17D, Chapter 4, Public Infrastructure District Act, may create tax areas, as defined in Section 59-2-102, within the public infrastructure district and apply a different property tax rate to each tax area, subject to the maximum rate limitations described in Subsections (10)(a)(i) and (10)(b)(ii).
- 1846 (ii) If a subsidiary created by a public infrastructure district issues bonds, the subsidiary may issue bonds secured by property taxes from:

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- 1848 (A) the entire public infrastructure district; or
- 1849 (B) one or more tax areas within the public infrastructure district.
- 1850 (11)
- (a) Terms defined in Section 57-11-2 apply to this Subsection (11).
- 1851 (b) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act, does not apply to an offer or disposition of an interest in land if the interest in land lies within the boundaries of the project area and the authority:
- 1854 (i)
- (A) has a development review committee using at least one professional planner;
- 1855 (B) enacts standards and guidelines that require approval of planning, land use, and plats, including the approval of plans for streets, culinary water, sanitary sewer, and flood control; and
- 1858 (C) will have the improvements described in Subsection (11)(b)(i)(B) plus telecommunications and electricity; and
- 1860 (ii) if at the time of the offer or disposition, the subdivider furnishes satisfactory assurance of completion of the improvements described in Subsection (11)(b)(i)(C).
- 1862 (12)
- (a) As used in this Subsection (12), "officer" means the same as an officer within the meaning of the Utah Constitution, Article IV, Section 10.
- 1864 (b) An official act of an officer may not be invalidated for the reason that the officer failed to take the oath of office.
- 1866 ~~{Section 26. Section 67-1b-104 is amended to read: }~~
- 1867 **67-1b-104. Duties during transition period.**
- 1868 (1) During a transition period, the executive branch shall:
- 1869 (a) provide any lawful assistance that the incoming gubernatorial administration may reasonably request related to the transition between gubernatorial administrations; and
- 1871 (b) take reasonable steps to:
- 1872 (i) avoid or minimize disruptions that might be occasioned by a transition between gubernatorial administrations; and
- 1874 (ii) facilitate an efficient transition between gubernatorial administrations.
- 1875 (2) During a transition period, the incoming gubernatorial administration shall take reasonable steps to:
- 1877

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- (a) avoid or minimize disruptions that might be occasioned by a transition between gubernatorial administrations; and
- 1879 (b) facilitate an efficient transition between gubernatorial administrations.
- 1880 (3)
- (a) During a transition period, the executive branch shall timely provide a governor-elect, upon the governor-elect's request, with all records and information from the executive branch upon any subject relating to the executive branch's condition, expenditures, expenses, management, operations, personnel, and receipts.
- 1884 ~~[(b) For a record requested by a governor-elect under Subsection (3)(a) that is classified as private or protected under Title 63G, Chapter 2, Government Records Access and Management Act, there is a rebuttable presumption that disclosure of the record to the governor-elect meets the conditions for disclosure under Subsection 63G-2-201(5).]~~
- 1888 ~~[(e)]~~ (b) A governor-elect who receives records under this Subsection (3) is subject to the provisions of Title 63G, Chapter 2, Government Records Access and Management Act, governing the use and disclosure of records.
- 1891 ~~[(d)]~~ (c) The disclosure of a record that is classified as private or protected to a governor-elect does not affect the classification of that record under Title 63G, Chapter 2, Government Records Access and Management Act.
- 1706 Section 25. Section **67-3-1** is amended to read:
- 1707 **67-3-1. Functions and duties.**
- 1896 (1)
- (a) The state auditor is the auditor of public accounts and is independent of any executive or administrative officers of the state.
- 1898 (b) The state auditor is not limited in the selection of personnel or in the determination of the reasonable and necessary expenses of the state auditor's office.
- 1900 (2) The state auditor shall examine and certify annually in respect to each fiscal year, financial statements showing:
- 1902 (a) the condition of the state's finances;
- 1903 (b) the revenues received or accrued;
- 1904 (c) expenditures paid or accrued;
- 1905



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- (d) the amount of unexpended or unencumbered balances of the appropriations to the agencies, departments, divisions, commissions, and institutions; and
- 1907 (e) the cash balances of the funds in the custody of the state treasurer.
- 1908 (3)
- (a) The state auditor shall:
  - 1909 (i) audit each permanent fund, each special fund, the General Fund, and the accounts of any department of state government or any independent agency or public corporation as the law requires, as the auditor determines is necessary, or upon request of the governor or the Legislature;
  - 1913 (ii) perform the audits in accordance with generally accepted auditing standards and other auditing procedures as promulgated by recognized authoritative bodies; and
  - 1915 (iii) as the auditor determines is necessary, conduct the audits to determine:
    - 1916 (A) honesty and integrity in fiscal affairs;
    - 1917 (B) accuracy and reliability of financial statements;
    - 1918 (C) effectiveness and adequacy of financial controls; and
    - 1919 (D) compliance with the law.
  - 1920 (b) If any state entity receives federal funding, the state auditor shall ensure that the audit is performed in accordance with federal audit requirements.
  - 1922 (c)
    - (i) The costs of the federal compliance portion of the audit may be paid from an appropriation to the state auditor from the General Fund.
    - 1924 (ii) If an appropriation is not provided, or if the federal government does not specifically provide for payment of audit costs, the costs of the federal compliance portions of the audit shall be allocated on the basis of the percentage that each state entity's federal funding bears to the total federal funds received by the state.
    - 1928 (iii) The allocation shall be adjusted to reflect any reduced audit time required to audit funds passed through the state to local governments and to reflect any reduction in audit time obtained through the use of internal auditors working under the direction of the state auditor.
  - 1932 (4)
    - (a) Except as provided in Subsection (4)(b), the state auditor shall, in addition to financial audits, and as the auditor determines is necessary, conduct performance and special purpose audits, examinations,

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and reviews of any entity that receives public funds, including a determination of any or all of the following:

- 1936 (i) the honesty and integrity of all the entity's fiscal affairs;
- 1937 (ii) whether the entity's administrators have faithfully complied with legislative intent;
- 1938 (iii) whether the entity's operations have been conducted in an efficient, effective, and cost-efficient manner;
- 1940 (iv) whether the entity's programs have been effective in accomplishing the intended objectives; and
- 1942 (v) whether the entity's management, control, and information systems are adequate, effective, and secure.
- 1944 (b) The auditor may not conduct performance and special purpose audits, examinations, and reviews of any entity that receives public funds if the entity:
- 1946 (i) has an elected auditor; and
- 1947 (ii) has, within the entity's last budget year, had the entity's financial statements or performance formally reviewed by another outside auditor.
- 1949 (5) The state auditor:
- 1950 (a) shall administer any oath or affirmation necessary to the performance of the duties of the auditor's office; and
- 1952 (b) may:
- 1953 (i) subpoena witnesses and documents, whether electronic or otherwise; and
- 1954 (ii) examine into any matter that the auditor considers necessary.
- 1955 (6) The state auditor may require all persons who have had the disposition or management of any property of this state or its political subdivisions to submit statements regarding the property at the time and in the form that the auditor requires.
- 1958 (7) The state auditor shall:
- 1959 (a) except where otherwise provided by law, institute suits in Salt Lake County in relation to the assessment, collection, and payment of revenues against:
- 1961 (i) persons who by any means have become entrusted with public money or property and have failed to pay over or deliver the money or property; and
- 1963 (ii) all debtors of the state;
- 1964 (b) collect and pay into the state treasury all fees received by the state auditor;

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- 1965 (c) perform the duties of a member of all boards of which the state auditor is a member by the constitution or laws of the state, and any other duties that are prescribed by the constitution and by law;
- 1968 (d) stop the payment of the salary of any state official or state employee who:
- 1969 (i) refuses to settle accounts or provide required statements about the custody and disposition of public funds or other state property;
- 1971 (ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling board or department head with respect to the manner of keeping prescribed accounts or funds; or
- 1974 (iii) fails to correct any delinquencies, improper procedures, and errors brought to the official's or employee's attention;
- 1976 (e) establish accounting systems, methods, and forms for public accounts in all taxing or fee-assessing units of the state in the interest of uniformity, efficiency, and economy;
- 1978 (f) superintend the contractual auditing of all state accounts;
- 1979 (g) subject to Subsection (8)(a), withhold state allocated funds or the disbursement of property taxes from a state or local taxing or fee-assessing unit, if necessary, to ensure that officials and employees in those taxing units comply with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds;
- 1983 (h) subject to Subsection (9), withhold the disbursement of tax money from any county, if necessary, to ensure that officials and employees in the county comply with Section 59-2-303.1; and
- 1986 (i) withhold state allocated funds or the disbursement of property taxes from a local government entity or a limited purpose entity, as those terms are defined in Section 67-1a-15 if the state auditor finds the withholding necessary to ensure that the entity registers and maintains the entity's registration with the lieutenant governor, in accordance with Section 67-1a-15.
- 1991 (8)
- (a) Except as otherwise provided by law, the state auditor may not withhold funds under Subsection (7)(g) until a state or local taxing or fee-assessing unit has received formal written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections.
- 1995 (b) If, after receiving notice under Subsection (8)(a), a state or independent local fee-assessing unit that exclusively assesses fees has not made corrections to comply with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds, the state auditor:
- 1999 (i) shall provide a recommended timeline for corrective actions;

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- 2000 (ii) may prohibit the state or local fee-assessing unit from accessing money held by the state; and
- 2002 (iii) may prohibit a state or local fee-assessing unit from accessing money held in an account of a financial institution by filing an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, requesting an order of the court to prohibit a financial institution from providing the fee-assessing unit access to an account.
- 2007 (c) The state auditor shall remove a limitation on accessing funds under Subsection (8)(b) upon compliance with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds.
- 2010 (d) If a local taxing or fee-assessing unit has not adopted a budget in compliance with state law, the state auditor:
- 2012 (i) shall provide notice to the taxing or fee-assessing unit of the unit's failure to comply;
- 2014 (ii) may prohibit the taxing or fee-assessing unit from accessing money held by the state; and
- 2016 (iii) may prohibit a taxing or fee-assessing unit from accessing money held in an account of a financial institution by:
- 2018 (A) contacting the taxing or fee-assessing unit's financial institution and requesting that the institution prohibit access to the account; or
- 2020 (B) filing an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, requesting an order of the court to prohibit a financial institution from providing the taxing or fee-assessing unit access to an account.
- 2023 (e) If the local taxing or fee-assessing unit adopts a budget in compliance with state law, the state auditor shall eliminate a limitation on accessing funds described in Subsection (8)(d).
- 2026 (9) The state auditor may not withhold funds under Subsection (7)(h) until a county has received formal written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections.
- 2029 (10)
- (a) The state auditor may not withhold funds under Subsection (7)(i) until the state auditor receives a notice of non-registration, as that term is defined in Section 67-1a-15.
- 2032 (b) If the state auditor receives a notice of non-registration, the state auditor may prohibit the local government entity or limited purpose entity, as those terms are defined in Section 67-1a-15, from accessing:
- 2035 (i) money held by the state; and

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- 2036 (ii) money held in an account of a financial institution by:
- 2037 (A) contacting the entity's financial institution and requesting that the institution prohibit access to the  
account; or
- 2039 (B) filing an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration,  
requesting an order of the court to prohibit a financial institution from providing the entity access to  
an account.
- 2042 (c) The state auditor shall remove the prohibition on accessing funds described in Subsection (10)(b) if  
the state auditor received a notice of registration, as that term is defined in Section 67-1a-15, from  
the lieutenant governor.
- 2045 (11) Notwithstanding Subsection (7)(g), (7)(h), (7)(i), (8)(b), (8)(d), or (10)(b), the state auditor:
- 2047 (a) shall authorize a disbursement by a local government entity or limited purpose entity, as those terms  
are defined in Section 67-1a-15, or a state or local taxing or fee-assessing unit if the disbursement is  
necessary to:
- 2050 (i) avoid a major disruption in the operations of the local government entity, limited purpose entity, or  
state or local taxing or fee-assessing unit; or
- 2052 (ii) meet debt service obligations; and
- 2053 (b) may authorize a disbursement by a local government entity, limited purpose entity, or state or local  
taxing or fee-assessing unit as the state auditor determines is appropriate.
- 2056 (12)
- (a) The state auditor may seek relief under the Utah Rules of Civil Procedure to take temporary custody  
of public funds if an action is necessary to protect public funds from being improperly diverted from  
their intended public purpose.
- 2059 (b) If the state auditor seeks relief under Subsection (12)(a):
- 2060 (i) the state auditor is not required to exhaust the procedures in Subsection (7) or (8); and
- 2062 (ii) the state treasurer may hold the public funds in accordance with Section 67-4-1 if a court orders the  
public funds to be protected from improper diversion from their public purpose.
- 2065 (13) The state auditor shall:
- 2066 (a) establish audit guidelines and procedures for audits of local mental health and substance abuse  
authorities and their contract providers, conducted pursuant to Title 17, Chapter 43, Part 2, Local  
Substance Abuse Authorities, Title 17, Chapter 43, Part 3, Local Mental Health Authorities,  
Title 26B, Chapter 5, Health Care - Substance Use and Mental Health, and Title 51, Chapter 2a,

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Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act; and

- 2072 (b) ensure that those guidelines and procedures provide assurances to the state that:
- 2073 (i) state and federal funds appropriated to local mental health authorities are used for mental health purposes;
- 2075 (ii) a private provider under an annual or otherwise ongoing contract to provide comprehensive mental health programs or services for a local mental health authority is in compliance with state and local contract requirements and state and federal law;
- 2079 (iii) state and federal funds appropriated to local substance abuse authorities are used for substance abuse programs and services; and
- 2081 (iv) a private provider under an annual or otherwise ongoing contract to provide comprehensive substance abuse programs or services for a local substance abuse authority is in compliance with state and local contract requirements, and state and federal law.
- 2085 (14)
- (a) The state auditor may, in accordance with the auditor's responsibilities for political subdivisions of the state as provided in Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, initiate audits or investigations of any political subdivision that are necessary to determine honesty and integrity in fiscal affairs, accuracy and reliability of financial statements, effectiveness, and adequacy of financial controls and compliance with the law.
- 2092 (b) If the state auditor receives notice under Subsection 11-41-104(7) from the Governor's Office of Economic Opportunity on or after July 1, 2024, the state auditor may initiate an audit or investigation of the public entity subject to the notice to determine compliance with Section 11-41-103.
- 2096 (15)
- (a) The state auditor may not audit work that the state auditor performed before becoming state auditor.
- 2098 (b) If the state auditor has previously been a responsible official in state government whose work has not yet been audited, the Legislature shall:
- 2100 (i) designate how that work shall be audited; and
- 2101 (ii) provide additional funding for those audits, if necessary.
- 2102 (16) The state auditor shall:

## SB0277 compared with SB0277S04

- 2103 (a) with the assistance, advice, and recommendations of an advisory committee appointed by the state auditor from among special district boards of trustees, officers, and employees and special service district boards, officers, and employees:
- 2106 (i) prepare a Uniform Accounting Manual for Special Districts that:
- 2107 (A) prescribes a uniform system of accounting and uniform budgeting and reporting procedures for special districts under Title 17B, Limited Purpose Local Government Entities - Special Districts, and special service districts under Title 17D, Chapter 1, Special Service District Act;
- 2111 (B) conforms with generally accepted accounting principles; and
- 2112 (C) prescribes reasonable exceptions and modifications for smaller districts to the uniform system of accounting, budgeting, and reporting;
- 2114 (ii) maintain the manual under this Subsection (16)(a) so that the manual continues to reflect generally accepted accounting principles;
- 2116 (iii) conduct a continuing review and modification of procedures in order to improve them;
- 2118 (iv) prepare and supply each district with suitable budget and reporting forms; and
- 2119 (v)
- (A) prepare instructional materials, conduct training programs, and render other services considered necessary to assist special districts and special service districts in implementing the uniform accounting, budgeting, and reporting procedures; and
- 2123 (B) ensure that any training described in Subsection (16)(a)(v)(A) complies with Title 63G, Chapter 22, State Training and Certification Requirements; and
- 2125 (b) continually analyze and evaluate the accounting, budgeting, and reporting practices and experiences of specific special districts and special service districts selected by the state auditor and make the information available to all districts.
- 2128 (17)
- (a) The following records in the custody or control of the state auditor are protected records under Title 63G, Chapter 2, Government Records Access and Management Act:
- 2131 (i) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a past or present governmental employee if the information or allegation cannot be corroborated by the state auditor through other documents or evidence, and the records relating to the allegation are not relied upon by the state auditor in preparing a final audit report;

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- 2137 (ii) records and audit workpapers to the extent the workpapers would disclose the identity of  
an individual who during the course of an audit, communicated the existence of any waste  
of public funds, property, or manpower, or a violation or suspected violation of a law, rule,  
or regulation adopted under the laws of this state, a political subdivision of the state, or any  
recognized entity of the United States, if the information was disclosed on the condition that the  
identity of the individual be protected;
- 2144 (iii) before an audit is completed and the final audit report is released, records or drafts circulated  
to an individual who is not an employee or head of a governmental entity for the individual's  
response or information;
- 2147 (iv) records that would disclose an outline or part of any audit survey plans or audit program; and  
2149 (v) requests for audits, if disclosure would risk circumvention of an audit.
- 2150 (b) The provisions of Subsections (17)(a)(i), (ii), and (iii) do not prohibit the disclosure of records  
or information that relate to a violation of the law by a governmental entity or employee to a  
government prosecutor or peace officer.
- 2153 (c) The provisions of this Subsection (17) do not limit the authority otherwise given to the state auditor  
to classify a document as public, private, controlled, or protected under Title 63G, Chapter 2,  
Government Records Access and Management Act.
- 2156 (d)  
(i) As used in this Subsection (17)(d), "record dispute" means a dispute between the state auditor and  
the subject of an audit performed by the state auditor as to whether the state auditor may release  
a record, as defined in Section 63G-2-103, to the public that the state auditor gained access to in  
the course of the state auditor's audit but which the subject of the audit claims is not subject to  
disclosure under Title 63G, Chapter 2, Government Records Access and Management Act.
- 2162 (ii) The state auditor may submit a record dispute to the [~~State Records Committee, created in Section  
63G-2-501~~] director of the Government Records Office, created in Section 63A-12-202, for a  
determination of whether the state auditor may, in conjunction with the state auditor's release of an  
audit report, release to the public the record that is the subject of the record dispute.
- 2167 (iii) The state auditor or the subject of the audit may seek judicial review of [~~a State Records Committee  
] the director's determination[ ~~under~~] , described in Subsection (17)(d)(ii), as provided in Section  
63G-2-404.~~

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## SB0277 compared with SB0277S04

- (18) If the state auditor conducts an audit of an entity that the state auditor has previously audited and finds that the entity has not implemented a recommendation made by the state auditor in a previous audit, the state auditor shall notify the Legislative Management Committee through the Legislative Management Committee's audit subcommittee that the entity has not implemented that recommendation.
- 2175 (19) The state auditor shall, with the advice and consent of the Senate, appoint the state privacy officer described in Section 67-3-13.
- 2177 (20) Except as provided in Subsection (21), the state auditor shall report, or ensure that another government entity reports, on the financial, operational, and performance metrics for the state system of higher education and the state system of public education, including metrics in relation to students, programs, and schools within those systems.
- 2181 (21)
- (a) Notwithstanding Subsection (20), the state auditor shall conduct regular audits of:
- 2182 (i) the scholarship granting organization for the Carson Smith Opportunity Scholarship Program, created in Section 53E-7-402;
- 2184 (ii) the State Board of Education for the Carson Smith Scholarship Program, created in Section 53F-4-302; and
- 2186 (iii) the scholarship program manager for the Utah Fits All Scholarship Program, created in Section 53F-6-402, including an analysis of the cost effectiveness of the program, taking into consideration the amount of the scholarship and the amount of state and local funds dedicated on a per-student basis within the traditional public education system.
- 2191 (b) Nothing in this subsection limits or impairs the authority of the State Board of Education to administer the programs described in Subsection (21)(a).
- 2193 (22) The state auditor shall, based on the information posted by the Office of Legislative Research and General Counsel under Subsection 36-12-12.1(2), for each policy, track and post the following information on the state auditor's website:
- 2196 (a) the information posted under Subsections 36-12-12.1(2)(a) through (e);
- 2197 (b) an indication regarding whether the policy is timely adopted, adopted late, or not adopted;
- 2199 (c) an indication regarding whether the policy complies with the requirements established by law for the policy; and
- 2201 (d) a link to the policy.

## SB0277 compared with SB0277S04

- 2202 (23)
- (a) A legislator may request that the state auditor conduct an inquiry to determine whether a government entity, government official, or government employee has complied with a legal obligation directly imposed, by statute, on the government entity, government official, or government employee.
- 2206 (b) The state auditor may, upon receiving a request under Subsection (23)(a), conduct the inquiry requested.
- 2208 (c) If the state auditor conducts the inquiry described in Subsection (23)(b), the state auditor shall post the results of the inquiry on the state auditor's website.
- 2210 (d) The state auditor may limit the inquiry described in this Subsection (23) to a simple determination, without conducting an audit, regarding whether the obligation was fulfilled.
- 2213 (24) The state auditor shall:
- 2214 (a) ensure compliance with Title 63G, Chapter 31, Distinctions on the Basis of Sex, in accordance with Section 63G-31-401; and
- 2216 (b) report to the Legislative Management Committee, upon request, regarding the state auditor's actions under this Subsection (24).
- 2218 (25) The state auditor shall report compliance with Sections 67-27-107, 67-27-108, and 67-27-109 by:
- 2220 (a) establishing a process to receive and audit each alleged violation; and
- 2221 (b) reporting to the Legislative Management Committee, upon request, regarding the 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 investigation report -- Evidence or other information at sentencing.**
- 2226 (1) Before the imposition of a sentence, the court may:
- 2227 (a) upon agreement of the defendant, continue the date for the imposition of the sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department or a law enforcement agency, or information from any other source about the defendant; and
- 2231 (b) if the defendant is convicted of a felony or a class A misdemeanor, request that the department or a law enforcement agency prepare a presentence investigation report for the defendant.
- 2234 (2)

## SB0277 compared with SB0277S04

- (a) Notwithstanding Subsection (1), if a defendant is convicted of a felony offense and the defendant is a habitual offender, the prosecuting attorney shall notify the court that the defendant is a habitual offender.
- 2237 (b) Upon a notification under Subsection (2)(a), the court may not impose a sentence for the conviction without ordering and obtaining a presentence investigation report, unless the court finds good cause to proceed with sentencing without the presentence investigation report.
- 2241 (3) If a presentence investigation report is required under Subsection (2) or the standards established by the department described in Section 77-18-109, the presentence investigation report under Subsection (1) shall include:
- 2244 (a) any impact statement provided by a victim as described in Subsection 77-38b-203(3)(c);
- 2246 (b) information on restitution as described in Subsections 77-38b-203(3)(a) and (b);
- 2247 (c) recommendations for treatment for the defendant; and
- 2248 (d) the number of days since the commission of the offense that the defendant has spent in the custody of the jail and the number of days, if any, the defendant was released to a supervised release program or an alternative incarceration program under Section 17-22-5.5.
- 2252 (4) The department or law enforcement agency shall provide the presentence investigation report to the defendant's attorney, or the defendant if the defendant is not represented by counsel, the prosecuting attorney, and the court for review within three working days before the day on which the defendant is sentenced.
- 2256 (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:
- 2259 (A) the alleged inaccuracy shall be brought to the attention of the court at sentencing; and
- 2261 (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.
- 2265 (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:

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## SB0277 compared with SB0277S04

- (A) enter a written finding as to the relevance and accuracy of the challenged portion of the presentence investigation report; and
- 2270 (B) provide the written finding to the department or the law enforcement agency.
- 2271 (b) The department shall attach the written finding to the presentence investigation report as an addendum.
- 2273 (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.
- 2275 (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.
- 2278 (7)
- (a) A presentence investigation report is classified as protected in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.
- 2280 (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.
- 2283 (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:
- 2286 (a) ordered by the court in accordance with Subsection 63G-2-202(7);
- 2287 (b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of a defendant;
- 2289 (c) requested by the board;
- 2290 (d) requested by the subject of the presentence investigation report or the subject's authorized representative;
- 2292 (e) requested by the victim of the offense discussed in the presentence investigation report, or the victim's authorized representative, if the disclosure is only information relating to:
- 2295 (i) statements or materials provided by the victim;
- 2296 (ii) the circumstances of the offense, including statements by the defendant; or
- 2297 (iii) the impact of the offense on the victim or the victim's household; or
- 2298 (f) requested by a sex offender treatment provider;
- 2299

## SB0277 compared with SB0277S04

- (i) who is certified to provide treatment under the certification program established in Subsection 64-13-25(2);
- 2301 (ii) who is providing, at the time of the request, sex offender treatment to the offender who is the subject of the presentence investigation report; and
- 2303 (iii) who provides written assurance to the department that the report:
- 2304 (A) is necessary for the treatment of the defendant;
- 2305 (B) will be used solely for the treatment of the defendant; and
- 2306 (C) will not be disclosed to an individual or entity other than the defendant.
- 2307 (9)
- (a) At the time of sentence, the court shall receive any testimony, evidence, or information that the defendant or the prosecuting attorney desires to present concerning the appropriate sentence.
- 2310 (b) Testimony, evidence, or information under Subsection (9)(a) shall be presented in open court on record and in the presence of the defendant.
- 2312 (10) The court may not rely solely on an algorithm or a risk assessment tool score in 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.**
- 2316 (1)
- {(a)}
- ~~2130~~ (a) Subject to this chapter and other laws of the state, and except for a conviction for treason or impeachment, the board shall determine by majority decision when and under what conditions an offender's conviction may be pardoned or commuted.
- 2319 (b) The board shall determine by majority decision when and under what conditions an offender committed to serve a sentence at a penal or correctional facility, which is under the jurisdiction of the department, may:
- 2322 (i) be released upon parole;
- 2323 (ii) have a fine or forfeiture remitted;
- 2324 (iii) have the offender's criminal accounts receivable remitted in accordance with Section 77-32b-105 or 77-32b-106;
- 2326 (iv) have the offender's payment schedule modified in accordance with Section 77-32b-103; or
- 2328 (v) have the offender's sentence terminated.

## SB0277 compared with SB0277S04

- 2329 (c) The board shall prioritize public safety when making a determination under Subsection (1)(a) or (1)  
2330 (b).
- 2331 (d)
- 2332 (i) The board may sit together or in panels to conduct hearings.
- 2333 (ii) The chair shall appoint members to the panels in any combination and in accordance with rules  
2334 made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 2335 (iii) The chair may participate on any panel and when doing so is chair of the panel.
- 2336 (iv) The chair of the board may designate the chair for any other panel.
- 2337 (e)
- 2338 (i) Except after a hearing before the board, or the board's appointed examiner, in an open session, the  
2339 board may not:
- 2340 (A) remit a fine or forfeiture for an offender or the offender's criminal accounts receivable;
- 2341 (B) release the offender on parole; or
- 2342 (C) commute, pardon, or terminate an offender's sentence.
- 2343 (ii) An action taken under this Subsection (1) other than by a majority of the board shall be affirmed by  
2344 a majority of the board.
- 2345 (f) A commutation or pardon may be granted only after a full hearing before the board.
- 2346 (2)
- 2347 (a) In the case of a hearing, timely prior notice of the time and location of the hearing shall be given to  
2348 the offender.
- 2349 (b) The county or district attorney's office responsible for prosecution of the case, the sentencing court,  
2350 and law enforcement officials responsible for the defendant's arrest and conviction shall be notified  
2351 of any board hearings through the board's website.
- 2352 (c) Whenever possible, the victim or the victim's representative, if designated, shall be notified  
2353 of original hearings and any hearing after that if notification is requested and current contact  
2354 information has been provided to the board.
- 2355 (d)
- 2356 (i) Notice to the victim or the victim's representative shall include information provided in Section  
2357 77-27-9.5, and any related rules made by the board under that section.
- 2358 (ii) The information under Subsection (2)(d)(i) shall be provided in terms that are reasonable for the lay  
2359 person to understand.

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- 2359 (3)
- (a) A decision by the board is final and not subject for judicial review if the decision is regarding:
- 2361 (i) a pardon, parole, commutation, or termination of an offender's sentence;
- 2362 (ii) the modification of an offender's payment schedule for restitution; or
- 2363 (iii) the remission of an offender's criminal accounts receivable or a fine or forfeiture.
- 2364 (b) Deliberative processes are not public and the board is exempt from Title 52, Chapter 4, Open and Public Meetings Act, when the board is engaged in the board's deliberative process.
- 2367 (c) Pursuant to Subsection [~~63G-2-103(25)(b)(xi)~~] 63G-2-103(26)(b)(xii), records of the deliberative process are exempt from Title 63G, Chapter 2, Government Records Access and Management Act.
- 2370 (d) Unless it will interfere with a constitutional right, deliberative processes are not subject to disclosure, including discovery.
- 2372 (e) Nothing in this section prevents the obtaining or enforcement of a civil judgment.
- 2373 (4)
- (a) This chapter may not be construed as a denial of or limitation of the governor's power to grant respite or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment.
- 2376 (b) Notwithstanding Subsection (4)(a), respites or reprieves may not extend beyond the next session of the board.
- 2378 (c) At the next session of the board, the board:
- 2379 (i) shall continue or terminate the respite or reprieve; or
- 2380 (ii) may commute the punishment or pardon the offense as provided.
- 2381 (d) In the case of conviction for treason, the governor may suspend execution of the sentence until the case is reported to the Legislature at the Legislature's next session.
- 2383 (e) The Legislature shall pardon or commute the sentence or direct the sentence's execution.
- 2385 (5)
- (a) In determining when, where, and under what conditions an offender serving a sentence may be paroled or pardoned, have a fine or forfeiture remitted, have the offender's criminal accounts receivable remitted, or have the offender's sentence commuted or terminated, the board shall:
- 2389 (i) consider whether the offender has made restitution ordered by the court under Section 77-38b-205, or is prepared to pay restitution as a condition of any parole, pardon, remission of

## SB0277 compared with SB0277S04

a criminal accounts receivable or a fine or forfeiture, or a commutation or termination of the offender's sentence;

- 2393 (ii) except as provided in Subsection (5)(b), develop and use a list of criteria for making  
determinations under this Subsection (5);
- 2395 (iii) consider information provided by the department regarding an offender's individual case action  
plan; and
- 2397 (iv) review an offender's status within 60 days after the day on which the board receives notice  
from the department that the offender has completed all of the offender's case action plan  
components that relate to activities that can be accomplished while the offender is imprisoned.
- 2401 (b) The board shall determine whether to remit an offender's criminal accounts receivable under this  
Subsection (5) in accordance with Section 77-32b-105 or 77-32b-106.
- 2404 (6) In determining whether parole may be terminated, the board shall consider:
- 2405 (a) the offense committed by the parolee; and
- 2406 (b) the parole period under Section 76-3-202, and in accordance with Section 77-27-13.
- 2407 (7) For an offender placed on parole after December 31, 2018, the board shall terminate parole in  
accordance with the adult sentencing and supervision length guidelines, as defined in Section  
63M-7-401.1, to the extent the guidelines are consistent with the requirements of the law.
- 2411 (8) The board may not rely solely on an algorithm or a risk assessment tool score in determining  
whether parole should be granted or terminated for an offender.
- 2413 (9) The board may intervene as a limited-purpose party in a judicial or administrative proceeding,  
including a criminal action, to seek:
- 2415 (a) correction of an order that has or will impact the board's jurisdiction; or
- 2416 (b) clarification regarding an order that may impact the board's jurisdiction.
- 2417 (10) A motion to intervene brought under Subsection (8)(a) shall be raised within 60 days after the day  
on which a court enters the order that impacts the board's jurisdiction.

2233 Section 28. **Repealer.**

This Bill Repeals:

2234 This bill repeals:

2422 Section **63G-2-406, Evidentiary standards for release of certain enforcement and**  
2423 **litigation records.**

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



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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.**

Effective Date.

This bill takes effect on May 7, 2025.

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

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

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

2254 (f) determine disputes submitted by the state auditor under Subsection 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 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 the State~~  
Records Committee] decision to the director; or

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

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"(4) (a) Except as provided in Subsections (4)(b) ~~[and (c)]~~ through (d), no later than seven business days after ~~[receiving a notice of appeal, the executive secretary of the State Records Committee]~~ the day on which the director receives a notice of appeal, the director shall:

2271 (i) schedule a hearing for the ~~[State Records Committee]~~ director to discuss the appeal at the next regularly scheduled ~~[committee meeting falling]~~ hearing date that is at least 16 calendar days after the date the notice of appeal is filed but no ~~[longer than 64]~~ later than 90 calendar days after the date on which the notice of appeal ~~[was]~~ is filed, except that the ~~[committee]~~ director may schedule an expedited hearing upon application of the 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; and

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

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

2282 ~~[(B)]~~ (A) the records officer and the chief administrative officer of the governmental entity whose access denial is the subject of the appeal, if the records ~~[committee appellant]~~ petitioner is a requester or interested party;and

2285 ~~[(C) any person who made a business confidentiality claim under Section 63G-2-309 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 governmental entity's chief administrative officer, if the appeal is of the chief administrative officer's decision affirming an access denial.

2290 (b) ~~[(i)]~~ The ~~[executive secretary of the State Records Committee]~~ director may decline to schedule a hearing if the record series that is the subject of the appeal ~~[has been found by the committee in a previous hearing involving the same governmental entity to be appropriately classified as private, controlled, or protected]~~ is substantially 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 Committee]~~ director declines to schedule a hearing, the ~~[executive secretary shall send a notice to the records committee appellant indicating that the request for hearing has been denied and the reason for the denial.]~~ director shall:

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

2301 (ii) provide the parties with:

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

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- 2303 (B) notice that the director declined to schedule a hearing, that explains the reason for declining; and
- 2305 (C) notice of the right to appeal the decision and order, as described in Subsection (15).
- 2307 [~~(B) The State Records Committee shall make rules to implement this section as provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~]
- 2309 [~~(e)~~] (d) The [~~executive secretary of the State Records Committee~~] director may schedule a hearing on an appeal to the [~~State Records Committee at a regularly scheduled State Records Committee meeting~~] director on a regularly-scheduled hearing date that is later than the period described in Subsection (4)(a)(i) if that [~~committee meeting~~] hearing date is the first [~~regularly scheduled State Records Committee meeting~~] 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 entity shall submit to the executive secretary of the State Records Committee~~] each party shall provide to the director a written statement of facts, reasons, and legal authority in 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 mail, postage prepaid, to the requester or interested party~~] Each party shall send a copy of the party's written statement to each other party involved in the appeal, by email, on the same day on which the party complies with Subsection (5)(a). [~~The executive secretary shall forward a copy of the written statement to each member of the State Records Committee.~~]
- 2325 (6) (a) No later than [~~10~~] 15 business days [~~after the day on which the executive secretary sends the notice of appeal~~] before the day of the hearing, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention with the [~~State Records Committee~~] director.
- 2329 (b) Any written statement of facts, reasons, and legal authority in support of the intervener's position shall be filed with the request for intervention.
- 2331 (c) The person seeking intervention shall provide copies of the statement described in Subsection (6) (b) to all parties to the proceedings before the [~~State Records Committee~~] director.
- 2334 (7) The [~~State Records Committee~~] director shall hold a hearing within the period of time described in Subsection (4).
- 2336 (8) At the hearing, the [~~State Records Committee~~] director:
- 2337

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(a) shall allow the parties to testify, present evidence, and comment on the issues[. 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 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 was calculated.

2346 (17) If the director declines to schedule a hearing under Subsection (16)(a), the director shall:

2348 (a) issue an order declining to schedule a hearing that includes the reasons for 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 Subsection  
63G-2-701(6)(c) in S.B. 163.

3-5-25 5:51 PM