

Michael K. McKell proposes the following substitute bill:

Government Records Management Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

House Sponsor:

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- defines terms;
- creates the office within the division and describes the functions of the office;
- requires the governor to appoint the director of the office, in consultation with the executive director of the department, and with the advice and consent of the Senate;
- describes the term of office, qualifications, and duties of the director;
- repeals the committee;
- provides that the director will replace the committee in fulfilling the duties currently assigned to the committee, including the duty to decide appeals under the Government Records Access and Management Act;
- makes the government records ombudsman an employee of the office;
- grants rulemaking authority to the director of the office;
- provides for the transition from the committee to the director of the office; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

29 AMENDS:

- 30 **20A-11-1205**, as last amended by Laws of Utah 2020, Chapter 22
31 **53B-16-303**, as last amended by Laws of Utah 2020, Chapter 365
32 **63A-12-101**, as last amended by Laws of Utah 2023, Chapter 173
33 **63A-12-106**, as last amended by Laws of Utah 2019, Chapter 254
34 **63G-2-103**, as last amended by Laws of Utah 2024, Chapters 18, 465, 509, and 522
35 **63G-2-201**, as last amended by Laws of Utah 2023, Chapters 173, 516
36 **63G-2-209**, as enacted by Laws of Utah 2023, Chapter 516
37 **63G-2-309**, as last amended by Laws of Utah 2023, Chapter 516
38 **63G-2-400.5**, as last amended by Laws of Utah 2019, Chapters 254, 334
39 **63G-2-401**, as last amended by Laws of Utah 2024, Chapter 407
40 **63G-2-402**, as last amended by Laws of Utah 2024, Chapter 407
41 **63G-2-403**, as last amended by Laws of Utah 2024, Chapter 407
42 **63G-2-404**, as last amended by Laws of Utah 2024, Chapter 407
43 **63G-2-701**, as last amended by Laws of Utah 2019, Chapter 254
44 **63G-2-702**, as last amended by Laws of Utah 2023, Chapter 516
45 **63G-2-703**, as last amended by Laws of Utah 2023, Chapters 291, 516
46 **63G-2-801**, as last amended by Laws of Utah 2019, Chapter 254
47 **63H-1-202**, as last amended by Laws of Utah 2024, Chapter 514
48 **67-3-1**, as last amended by Laws of Utah 2024, Chapters 3, 158
49 **77-18-103**, as last amended by Laws of Utah 2024, Chapters 187, 245 and 434
50 **77-27-5**, as last amended by Laws of Utah 2024, Chapters 145, 187 and 208

51 ENACTS:

- 52 **63A-12-201**, Utah Code Annotated 1953
53 **63A-12-202**, Utah Code Annotated 1953
54 **63A-12-203**, Utah Code Annotated 1953

55 RENUMBERS AND AMENDS:

- 56 **63A-12-204**, (Renumbered from 63A-12-111, as last amended by Laws of Utah 2024,
57 Chapter 407)

58 REPEALS:

- 59 **63G-2-101**, as renumbered and amended by Laws of Utah 2008, Chapter 382
60 **63G-2-501**, as last amended by Laws of Utah 2024, Chapter 529
61 **63G-2-502**, as last amended by Laws of Utah 2019, Chapter 254

62

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

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

65 **20A-11-1205 . Use of public email for a political purpose.**

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

68 (a) for a political purpose;

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

71 (c) to solicit a campaign contribution.

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

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

76 (ii) except as provided in Subsection (3), for each subsequent violation committed
77 after the lieutenant governor imposes a fine against the person for a first violation,
78 \$1,000 multiplied by the number of violations committed by the person.

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

82 (3) The lieutenant governor shall consider a violation of this section as a first violation if
83 the violation is committed more than seven years after the day on which the person last
84 committed a violation of this section.

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

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

88 (a) the lieutenant governor finds that the email described in Subsection (1) was
89 inadvertently sent by the person using the email of a public entity;

90 (b) the person is directly providing information solely to another person or a group of
91 people in response to a question asked by the other person or group of people;

92 (c) the information the person emails is an argument or rebuttal argument prepared
93 under Section 20A-7-401.5 or 20A-7-402, and the email includes each opposing
94 argument and rebuttal argument that:

95 (i) relates to the same proposed initiative, initiative, proposed referendum, or
96 referendum; and

- 97 (ii) complies with the requirements of Section 20A-7-401.5 or 20A-7-402; or
 98 (d) the person is engaging in:
 99 (i) an internal communication solely within the public entity;
 100 (ii) a communication solely with another public entity;
 101 (iii) a communication solely with legal counsel;
 102 (iv) a communication solely with the sponsors of an initiative or referendum;
 103 (v) a communication solely with a land developer for a project permitted by a local
 104 land use law that is challenged by a proposed referendum or a referendum; or
 105 (vi) a communication solely with a person involved in a business transaction directly
 106 relating to a project described in Subsection (5)(d)(v).

107 (6) A violation of this section does not invalidate an otherwise valid election.

108 (7) An email sent in violation of Subsection (1), as determined by the records officer,
 109 constitutes a record, as defined in Section 63G-2-103, that is subject to the provisions of
 110 Title 63G, Chapter 2, Government Records Access and Management Act,
 111 notwithstanding any applicability of Subsection [63G-2-103(25)(b)(i)]
 112 63G-2-103(26)(b)(i).

113 Section 2. Section **53B-16-303** is amended to read:

114 **53B-16-303 . Access to restricted records.**

115 (1) Notwithstanding any other provision of Title 63G, Chapter 2, Government Records
 116 Access and Management Act, access to records restricted by this part shall only be
 117 permitted upon:

118 [(1)] (a) written consent of the public institution of higher education originating,
 119 receiving, or maintaining [~~such~~] the records; or

120 [(2)] (b) a finding by the [~~State Records Committee~~] director of the Government Records
 121 Office or a court that the record has not been properly classified as restricted under
 122 Section 63G-2-302, provided that the review of a restricted classification of a record
 123 shall not include considerations of weighing public and private interests regarding
 124 access to a properly classified record as contained in Subsection 63G-2-403(11)(b) or
 125 63G-2-404(7) or Section 63G-2-309.

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

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

129 **63A-12-101 . Division of Archives and Records Service created -- Duties.**

130 (1) There is created the Division of Archives and Records Service within the department.

- 131 (2) The state archives shall:
- 132 (a) administer the state's archives and records management programs, including storage
133 of records, central reformatting programs, and quality control;
- 134 (b) apply fair, efficient, and economical management methods to the collection, creation,
135 use, maintenance, retention, preservation, disclosure, and disposal of records and
136 documents;
- 137 (c) establish standards, procedures, and techniques for the effective management and
138 physical care of records;
- 139 (d) conduct surveys of office operations and recommend improvements in current
140 records management practices, including the use of space, equipment, automation,
141 and supplies used in creating, maintaining, storing, and servicing records;
- 142 (e) establish standards for the preparation of schedules providing for the retention of
143 records of continuing value and for the prompt and orderly disposal of state records
144 no longer possessing sufficient administrative, historical, legal, or fiscal value to
145 warrant further retention;
- 146 (f) establish, maintain, and operate centralized reformatting lab facilities and quality
147 control for the state;
- 148 (g) provide staff and support services to the Records Management Committee created in
149 Section 63A-12-112 and the [~~State Records Committee created in Section 63G-2-501~~]
150 Government Records Office, created in Section 63A-12-202;
- 151 (h) develop training programs to assist records officers and other interested officers and
152 employees of governmental entities to administer this chapter and Title 63G, Chapter
153 2, Government Records Access and Management Act;
- 154 (i) provide access to public records deposited in the archives;
- 155 (j) administer and maintain the Utah Public Notice Website established under Section
156 63A-16-601;
- 157 (k) provide assistance to any governmental entity in administering this chapter and Title
158 63G, Chapter 2, Government Records Access and Management Act;
- 159 (l) prepare forms for use by all governmental entities for a person requesting access to a
160 record; and
- 161 (m) if the department operates the Division of Archives and Records Service as an
162 internal service fund agency in accordance with Section 63A-1-109.5, submit to the
163 Rate Committee established in Section 63A-1-114:
- 164 (i) the proposed rate schedule as required by Section 63A-1-114; and

- 165 (ii) other information or analysis requested by the Rate Committee.
- 166 (3) The state archives may:
- 167 (a) establish a report and directives management program;
- 168 (b) establish a forms management program; and
- 169 (c) in accordance with Section 63A-12-101, require that an individual undergo a
- 170 background check if the individual:
- 171 (i) applies to be, or currently is, an employee or volunteer of the division; and
- 172 (ii) will have direct access to a vulnerable record in the capacity described in
- 173 Subsection (3)(c)(i).
- 174 (4) The executive director may direct the state archives to administer other functions or
- 175 services consistent with this chapter and Title 63G, Chapter 2, Government Records
- 176 Access and Management Act.

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

178 **63A-12-106 . Certified and microphotographed copies.**

- 179 (1)(a) Upon demand, the state archives shall furnish certified copies of a record in the
- 180 state archives's exclusive custody that is classified public or that is otherwise
- 181 determined to be public under this chapter by the originating governmental entity, the [
- 182 ~~State Records Committee created in Section 63G-2-501~~] director of the Government
- 183 Records Office, created in Section 63A-12-202, or a court of law.
- 184 (b) When certified by the state archivist under the seal of the state archives, a copy has
- 185 the same legal force and effect as if certified by the originating governmental entity.
- 186 (2) The state archives may microphotograph records when the state archives determines
- 187 that microphotography is an efficient and economical way to care, maintain, and
- 188 preserve the record. A transcript, exemplification, or certified copy of a
- 189 microphotograph has the same legal force and effect as the original. Upon review and
- 190 approval of the microphotographed film by the state archivist, the source documents
- 191 may be destroyed.
- 192 (3) The state archives may allow another governmental entity to microphotograph records
- 193 in accordance with standards set by the state archives.

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

195 **Part 2. Government Records Office**

196 **63A-12-201 . Definitions.**

197 As used in this part:

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

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

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

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

203 **63A-12-202 . Government Records Office -- Director -- Annual report.**

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

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

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

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

208 (3) The director shall be:

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

210 (b) knowledgeable regarding state law and practices relating to records management,

211 including the provisions of Title 63G, Chapter 2, Government Records Access and
212 Management Act;

213 (c) committed to:

214 (i) ensuring that records, and information in records, properly classified as private,

215 protected, or controlled are disclosed only to the extent expressly provided by law;

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

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

220 (d) capable of adjudicating appeals relating to the disclosure or nondisclosure of records

221 in a manner that is impartial, responsible, and strictly in accordance with the
222 requirements of law.

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

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

226 (c) The governor may remove the director with or without cause.

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

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

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

- 233 Section 7. Section **63A-12-203** is enacted to read:
- 234 **63A-12-203 . Duties of director and office -- Reassignment of classification or**
235 **designation -- Rulemaking authority -- Transition from State Records Committee.**
- 236 (1) The director shall:
- 237 (a) supervise and manage the office;
- 238 (b) appoint and supervise a government records ombudsman to fulfill the duties
239 described in Section 63A-12-204;
- 240 (c) administer the records appeal process;
- 241 (d) hear and decide appeals from determinations of access under Section 63G-2-403; and
- 242 (e) determine disputes submitted by the state auditor under Subsection 67-3-1(17)(d).
- 243 (2) The director may:
- 244 (a) employ staff to support the work of the office;
- 245 (b) by order, after notice and hearing, reassign classification or designation for any
246 record series by a governmental entity if the governmental entity's classification or
247 designation is inconsistent with Title 63G, Chapter 2, Government Records Access
248 and Management Act; and
- 249 (c) designate another individual to hear and decide appeals for a specific case if the
250 director has a conflict of interest in relation to that case.
- 251 (3) The office shall be a resource to citizens and government entities in relation to
252 government records, including:
- 253 (a) ensuring lawful access to records;
- 254 (b) ensuring the lawful restriction of access to records;
- 255 (c) classification of records;
- 256 (d) retention of records; and
- 257 (e) resolving records disputes informally, via informal mediation, or via the records
258 appeal process.
- 259 (4)(a) An affected governmental entity or any other interested person may appeal the
260 reassignment of a record under Subsection (2)(b) to a district court within 30 days
261 after the day on which the director makes the reassignment.
- 262 (b) The district court shall hear an appeal described in Subsection (4)(a) de novo.
- 263 (5) The director shall make rules, in accordance with Title 63G, Chapter 3, Utah
264 Administrative Rulemaking Act, to govern the procedures and proceedings for appeals
265 made to the director as described in this part.
- 266 (6) The director shall, to the extent practicable and until the rules described in Subsection

267 (5) are in effect, utilize the rules made by the former State Records Committee before
 268 January 1, 2025, with the director acting in place of the former State Records Committee.

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

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

274 **[63A-12-111] 63A-12-204 . Government records ombudsman.**

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

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

278 ~~[(2)] (1)(a) The government records ombudsman, appointed under Section 63A-12-202,~~
 279 ~~shall:~~

280 (i) be familiar with the provisions of Title 63G, Chapter 2, Government Records
 281 Access and Management Act;

282 (ii) serve as a resource for a person who is making or responding to a records request
 283 or filing an appeal relating to a records request; and

284 (iii) upon a request from a requester or responder, and with the consent of both the
 285 requester and responder, mediate a dispute between a requester and responder,
 286 including a dispute between a requester and a governmental entity regarding the
 287 governmental entity's access denial, as defined in Section 63G-2-400.5~~;~~ and .

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

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

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

297 ~~[(3)] (2) The government records ombudsman may not testify, or be compelled to testify, [~~
 298 ~~before the State Records Committee created in Section 63G-2-501, another-] regarding a~~
 299 matter for which the government records ombudsman provides services under this
 300 section:

301 (a) in an appeals proceeding described in Title 63G, Chapter 2, Part 4, Appeals; or
 302 (b) before an administrative body[;] or a court[regarding a matter that the government
 303 records ombudsman provided services in relation to under this section].

304 [(4)] (3) Upon the conclusion of a mediation [under Subsection (2)(a)(iii)] described in
 305 Subsection (1)(a)(iii), or upon the government records ombudsman's determination that
 306 the required consent for the mediation is lacking, the government records ombudsman
 307 shall:

308 (a) certify in writing that the mediation:

309 (i) is concluded; or

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

311 and

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

313 Section 9. Section **63G-2-103** is amended to read:

314 **63G-2-103 . Definitions.**

315 As used in this chapter:

316 (1) "Audit" means:

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

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

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

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

326 and

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

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

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

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

- 335 (ii) any associated documentation and source material that explain how to operate the
336 computer program.
- 337 (b) "Computer program" does not mean:
- 338 (i) the original data, including numbers, text, voice, graphics, and images;
- 339 (ii) analysis, compilation, and other manipulated forms of the original data produced
340 by use of the program; or
- 341 (iii) the mathematical or statistical formulas, excluding the underlying mathematical
342 algorithms contained in the program, that would be used if the manipulated forms
343 of the original data were to be produced manually.
- 344 (5)(a) "Contractor" means:
- 345 (i) any person who contracts with a governmental entity to provide goods or services
346 directly to a governmental entity; or
- 347 (ii) any private, nonprofit organization that receives funds from a governmental entity.
- 348 (b) "Contractor" does not mean a private provider.
- 349 (6) "Controlled record" means a record containing data on individuals that is controlled as
350 provided by Section 63G-2-304.
- 351 (7) "Designation," "designate," and their derivative forms mean indicating, based on a
352 governmental entity's familiarity with a record series or based on a governmental entity's
353 review of a reasonable sample of a record series, the primary classification that a
354 majority of records in a record series would be given if classified and the classification
355 that other records typically present in the record series would be given if classified.
- 356 (8) "Elected official" means each person elected to a state office, county office, municipal
357 office, school board or school district office, special district office, or special service
358 district office, but does not include judges.
- 359 (9) "Explosive" means a chemical compound, device, or mixture:
- 360 (a) commonly used or intended for the purpose of producing an explosion; and
- 361 (b) that contains oxidizing or combustible units or other ingredients in proportions,
362 quantities, or packing so that:
- 363 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the
364 compound or mixture may cause a sudden generation of highly heated gases; and
- 365 (ii) the resultant gaseous pressures are capable of:
- 366 (A) producing destructive effects on contiguous objects; or
- 367 (B) causing death or serious bodily injury.
- 368 (10) "Government audit agency" means any governmental entity that conducts an audit.

- 369 (11)(a) "Governmental entity" means:
- 370 (i) executive department agencies of the state, the offices of the governor, lieutenant
371 governor, state auditor, attorney general, and state treasurer, the Board of Pardons
372 and Parole, the Board of Examiners, the National Guard, the Career Service
373 Review Office, the State Board of Education, the Utah Board of Higher
374 Education, and the State Archives;
- 375 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal
376 Analyst, Office of Legislative Research and General Counsel, the Legislature, and
377 legislative committees, except any political party, group, caucus, or rules or sifting
378 committee of the Legislature;
- 379 (iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar
380 administrative units in the judicial branch;
- 381 (iv) any state-funded institution of higher education or public education; or
- 382 (v) any political subdivision of the state, but, if a political subdivision has adopted an
383 ordinance or a policy relating to information practices pursuant to Section
384 63G-2-701, this chapter shall apply to the political subdivision to the extent
385 specified in Section 63G-2-701 or as specified in any other section of this chapter
386 that specifically refers to political subdivisions.
- 387 (b) "Governmental entity" also means:
- 388 (i) every office, agency, board, bureau, committee, department, advisory board, or
389 commission of an entity listed in Subsection (11)(a) that is funded or established
390 by the government to carry out the public's business;
- 391 (ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative
392 undertaking, except for the Water District Water Development Council created
393 pursuant to Section 11-13-228;
- 394 (iii) as defined in Section 11-13a-102, a governmental nonprofit corporation;
- 395 (iv) an association as defined in Section 53G-7-1101;
- 396 (v) the Utah Independent Redistricting Commission; and
- 397 (vi) a law enforcement agency, as defined in Section 53-1-102, that employs one or
398 more law enforcement officers, as defined in Section 53-13-103.
- 399 (c) "Governmental entity" does not include the Utah Educational Savings Plan created in
400 Section 53B-8a-103.
- 401 (12) "Government Records Office" means the same as that term is defined in Section
402 63A-12-201.

- 403 [(12)] (13) "Gross compensation" means every form of remuneration payable for a given
404 period to an individual for services provided including salaries, commissions, vacation
405 pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind,
406 and any similar benefit received from the individual's employer.
- 407 [(13)] (14) "Individual" means a human being.
- 408 [(14)] (15)(a) "Initial contact report" means an initial written or recorded report, however
409 titled, prepared by peace officers engaged in public patrol or response duties
410 describing official actions initially taken in response to either a public complaint
411 about or the discovery of an apparent violation of law, which report may describe:
- 412 (i) the date, time, location, and nature of the complaint, the incident, or offense;
 - 413 (ii) names of victims;
 - 414 (iii) the nature or general scope of the agency's initial actions taken in response to the
415 incident;
 - 416 (iv) the general nature of any injuries or estimate of damages sustained in the incident;
 - 417 (v) the name, address, and other identifying information about any person arrested or
418 charged in connection with the incident; or
 - 419 (vi) the identity of the public safety personnel, except undercover personnel, or
420 prosecuting attorney involved in responding to the initial incident.
- 421 (b) Initial contact reports do not include follow-up or investigative reports prepared after
422 the initial contact report. However, if the information specified in Subsection [(14)(a)]
423 (15)(a) appears in follow-up or investigative reports, it may only be treated
424 confidentially if it is private, controlled, protected, or exempt from disclosure under
425 Subsection 63G-2-201(3)(b).
- 426 (c) Initial contact reports do not include accident reports, as that term is described in
427 Title 41, Chapter 6a, Part 4, Accident Responsibilities.
- 428 [(15)] (16) "Legislative body" means the Legislature.
- 429 [(16)] (17) "Notice of compliance" means a statement confirming that a governmental entity
430 has complied with an order of the [~~State Records Committee~~] director of the Government
431 Records Office.
- 432 [(17)] (18) "Person" means:
- 433 (a) an individual;
 - 434 (b) a nonprofit or profit corporation;
 - 435 (c) a partnership;
 - 436 (d) a sole proprietorship;

- 437 (e) other type of business organization; or
- 438 (f) any combination acting in concert with one another.
- 439 ~~[(18)]~~ (19) "Personal identifying information" means the same as that term is defined in
- 440 Section 63A-12-100.5.
- 441 ~~[(19)]~~ (20) "Privacy annotation" means the same as that term is defined in Section
- 442 63A-12-100.5.
- 443 ~~[(20)]~~ (21) "Private provider" means any person who contracts with a governmental entity to
- 444 provide services directly to the public.
- 445 ~~[(21)]~~ (22) "Private record" means a record containing data on individuals that is private as
- 446 provided by Section 63G-2-302.
- 447 ~~[(22)]~~ (23) "Protected record" means a record that is classified protected as provided by
- 448 Section 63G-2-305.
- 449 ~~[(23)]~~ (24) "Public record" means a record that is not private, controlled, or protected and
- 450 that is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).
- 451 ~~[(24)]~~ (25) "Reasonable search" means a search that is:
- 452 (a) reasonable in scope and intensity; and
- 453 (b) not unreasonably burdensome for the government entity.
- 454 ~~[(25)]~~ (26)(a) "Record" means a book, letter, document, paper, map, plan, photograph,
- 455 film, card, tape, recording, electronic data, or other documentary material regardless
- 456 of physical form or characteristics:
- 457 (i) that is prepared, owned, received, or retained by a governmental entity or political
- 458 subdivision; and
- 459 (ii) where all of the information in the original is reproducible by photocopy or other
- 460 mechanical or electronic means.
- 461 (b) "Record" does not include:
- 462 (i) a personal note or personal communication prepared or received by an employee
- 463 or officer of a governmental entity:
- 464 (A) in a capacity other than the employee's or officer's governmental capacity; or
- 465 (B) that is unrelated to the conduct of the public's business;
- 466 (ii) a temporary draft or similar material prepared for the originator's personal use or
- 467 prepared by the originator for the personal use of an individual for whom the
- 468 originator is working;
- 469 (iii) material that is legally owned by an individual in the individual's private capacity;
- 470 (iv) material to which access is limited by the laws of copyright or patent unless the

- 471 copyright or patent is owned by a governmental entity or political subdivision;
- 472 (v) proprietary software;
- 473 (vi) junk mail or a commercial publication received by a governmental entity or an
474 official or employee of a governmental entity;
- 475 (vii) a book that is cataloged, indexed, or inventoried and contained in the collections
476 of a library open to the public;
- 477 (viii) material that is cataloged, indexed, or inventoried and contained in the
478 collections of a library open to the public, regardless of physical form or
479 characteristics of the material;
- 480 (ix) a daily calendar ;
- 481 (x) a note prepared by the originator for the originator's own use or for the sole use of
482 an individual for whom the originator is working;
- 483 (xi) a computer program that is developed or purchased by or for any governmental
484 entity for its own use;
- 485 (xii) a note or internal memorandum prepared as part of the deliberative process by:
- 486 (A) a member of the judiciary;
- 487 (B) an administrative law judge;
- 488 (C) a member of the Board of Pardons and Parole; or
- 489 (D) a member of any other body, other than an association or appeals panel as
490 defined in Section 53G-7-1101, charged by law with performing a
491 quasi-judicial function;
- 492 (xiii) a telephone number or similar code used to access a mobile communication
493 device that is used by an employee or officer of a governmental entity, provided
494 that the employee or officer of the governmental entity has designated at least one
495 business telephone number that is a public record as provided in Section
496 63G-2-301;
- 497 (xiv) information provided by the Public Employees' Benefit and Insurance Program,
498 created in Section 49-20-103, to a county to enable the county to calculate the
499 amount to be paid to a health care provider under Subsection 17-50-319(2)(e)(ii);
- 500 (xv) information that an owner of unimproved property provides to a local entity as
501 provided in Section 11-42-205;
- 502 (xvi) a video or audio recording of an interview, or a transcript of the video or audio
503 recording, that is conducted at a Children's Justice Center established under
504 Section 67-5b-102;

- 505 (xvii) child sexual abuse material, as defined by Section 76-5b-103;
- 506 (xviii) before final disposition of an ethics complaint occurs, a video or audio
- 507 recording of the closed portion of a meeting or hearing of:
- 508 (A) a Senate or House Ethics Committee;
- 509 (B) the Independent Legislative Ethics Commission;
- 510 (C) the Independent Executive Branch Ethics Commission, created in Section
- 511 63A-14-202; or
- 512 (D) the Political Subdivisions Ethics Review Commission established in Section
- 513 63A-15-201;
- 514 (xix) confidential communication described in Section 58-60-102, 58-61-102, or
- 515 58-61-702;
- 516 (xx) any item described in Subsection [~~(25)(a)~~] (26)(a) that is:
- 517 (A) described in Subsection 63G-2-305(17), (18), or (23)(b); and
- 518 (B) shared between any of the following entities:
- 519 (I) the Division of Risk Management;
- 520 (II) the Office of the Attorney General;
- 521 (III) the governor's office; or
- 522 (IV) the Legislature; or
- 523 (xxi) the email address that a candidate for elective office provides to a filing officer
- 524 under Subsection 20A-9-201(5)(c)(ii) or 20A-9-203(4)(c)(iv).
- 525 [~~(26)~~] (27) "Record series" means a group of records that may be treated as a unit for
- 526 purposes of designation, description, management, or disposition.
- 527 [~~(27)~~] (28) "Records officer" means the individual appointed by the chief administrative
- 528 officer of each governmental entity, or the political subdivision to work with state
- 529 archives in the care, maintenance, scheduling, designation, classification, disposal, and
- 530 preservation of records.
- 531 [~~(28)~~] (29) "Schedule," "scheduling," and their derivative forms mean the process of
- 532 specifying the length of time each record series should be retained by a governmental
- 533 entity for administrative, legal, fiscal, or historical purposes and when each record series
- 534 should be transferred to the state archives or destroyed.
- 535 [~~(29)~~] (30) "Sponsored research" means research, training, and other sponsored activities as
- 536 defined by the federal Executive Office of the President, Office of Management and
- 537 Budget:
- 538 (a) conducted:

- 539 (i) by an institution within the state system of higher education defined in Section
 540 53B-1-102; and
- 541 (ii) through an office responsible for sponsored projects or programs; and
- 542 (b) funded or otherwise supported by an external:
- 543 (i) person that is not created or controlled by the institution within the state system of
 544 higher education; or
- 545 (ii) federal, state, or local governmental entity.

546 ~~[(30)]~~ (31) "State archives" means the Division of Archives and Records Service created in
 547 Section 63A-12-101.

548 ~~[(31)]~~ (32) "State archivist" means the director of the state archives.

549 ~~[(32) "State Records Committee" means the State Records Committee created in Section
 550 63G-2-501.]~~

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

554 Section 10. Section **63G-2-201** is amended to read:

555 **63G-2-201 . Provisions relating to records -- Public records -- Private, controlled,
 556 protected, and other restricted records -- Disclosure and nondisclosure of records --
 557 Certified copy of record -- Limits on obligation to respond to record request.**

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

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

- 562 (i) a copy of which the governmental entity has already provided to the person;
- 563 (ii) that is the subject of a records request that the governmental entity is not required
 564 to fill under Subsection (7)(a)(v); or
- 565 (iii)(A) that is accessible only by a computer or other electronic device owned or
 566 controlled by the governmental entity;
- 567 (B) that is part of an electronic file that also contains a record that is private,
 568 controlled, or protected; and
- 569 (C) that the governmental entity cannot readily segregate from the part of the
 570 electronic file that contains a private, controlled, or protected record.

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

572 (3) The following records are not public:

- 573 (a) a record that is private, controlled, or protected under Sections 63G-2-302, 63G-2-303,
574 63G-2-304, and 63G-2-305; and
- 575 (b) a record to which access is restricted pursuant to court rule, another state statute,
576 federal statute, or federal regulation, including records for which access is governed
577 or restricted as a condition of participation in a state or federal program or for
578 receiving state or federal funds.
- 579 (4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or 63G-2-305
580 may be classified private, controlled, or protected.
- 581 (5)(a) A governmental entity may not disclose a record that is private, controlled, or
582 protected to any person except as provided in Subsection (5)(b), Subsection (5)(c),
583 Section 63G-2-202, 63G-2-206, or 63G-2-303.
- 584 (b) A governmental entity may disclose a record that is private under Subsection
585 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those
586 specified in Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or
587 a designee, determines that:
- 588 (i) there is no interest in restricting access to the record; or
589 (ii) the interests favoring access are greater than or equal to the interest favoring
590 restriction of access.
- 591 (c) In addition to the disclosure under Subsection (5)(b), a governmental entity may
592 disclose a record that is protected under Subsection 63G-2-305(51) if:
- 593 (i) the head of the governmental entity, or a designee, determines that the disclosure:
594 (A) is mutually beneficial to:
595 (I) the subject of the record;
596 (II) the governmental entity; and
597 (III) the public; and
598 (B) serves a public purpose related to:
599 (I) public safety; or
600 (II) consumer protection; and
601 (ii) the person who receives the record from the governmental entity agrees not to use
602 or allow the use of the record for advertising or solicitation purposes.
- 603 (6) A governmental entity shall provide a person with a certified copy of a record if:
604 (a) the person requesting the record has a right to inspect it;
605 (b) the person identifies the record with reasonable specificity; and
606 (c) the person pays the lawful fees.

- 607 (7)(a) In response to a request, a governmental entity is not required to:
- 608 (i) create a record;
- 609 (ii) compile, format, manipulate, package, summarize, or tailor information;
- 610 (iii) provide a record in a particular format, medium, or program not currently
- 611 maintained by the governmental entity;
- 612 (iv) fulfill a person's records request if the request unreasonably duplicates prior
- 613 records requests from that person;
- 614 (v) fill a person's records request if:
- 615 (A) the record requested is:
- 616 (I) publicly accessible online; or
- 617 (II) included in a public publication or product produced by the governmental
- 618 entity receiving the request; and
- 619 (B) the governmental entity:
- 620 (I) specifies to the person requesting the record where the record is accessible
- 621 online; or
- 622 (II) provides the person requesting the record with the public publication or
- 623 product and specifies where the record can be found in the public
- 624 publication or product; or
- 625 (vi) fulfill a person's records request if:
- 626 (A) the person has been determined under Section 63G-2-209 to be a vexatious
- 627 requester;
- 628 (B) the ~~[State Records Committee]~~ order of the director of the Government
- 629 Records Office determining the person to be a vexatious requester provides
- 630 that the governmental entity is not required to fulfill a request from the person
- 631 for a period of time; and
- 632 (C) the period of time described in Subsection (7)(a)(vi)(B) has not expired.
- 633 (b) A governmental entity shall conduct a reasonable search for a requested record.
- 634 (8)(a) Although not required to do so, a governmental entity may, upon request from the
- 635 person who submitted the records request, compile, format, manipulate, package,
- 636 summarize, or tailor information or provide a record in a format, medium, or program
- 637 not currently maintained by the governmental entity.
- 638 (b) In determining whether to fulfill a request described in Subsection (8)(a), a
- 639 governmental entity may consider whether the governmental entity is able to fulfill
- 640 the request without unreasonably interfering with the governmental entity's duties

641 and responsibilities.

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

645 (9)(a) Notwithstanding any other provision of this chapter, and subject to Subsection
646 (9)(b), a governmental entity is not required to respond to, or provide a record in
647 response to, a record request if the request is submitted by or in behalf of an
648 individual who is confined in a jail or other correctional facility following the
649 individual's conviction.

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

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

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

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

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

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

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

673 (b) Nothing in this chapter shall be construed to limit or impair the rights or protections
674 granted to the governmental entity under federal copyright or patent law as a result of

675 its ownership of the intellectual property right.

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

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

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

689 (14) In determining whether a record is properly classified as private under Subsection
690 63G-2-302(2)(d), the governmental entity, ~~[State Records Committee]~~ the director of the
691 Government Records Office, local appeals board, or court shall consider and weigh:

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

695 Section 11. Section **63G-2-209** is amended to read:

696 **63G-2-209 . Vexatious requester.**

697 (1) As used in this section:

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

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

701 (a) "Director" means the director of the Government Records Office, created in Section
702 63A-12-202.

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

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

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

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

- 709 and]
- 710 [(ii)] _contain:
- 711 [(A)] (i) the name, phone number, mailing address, and email address that the
 712 respondent submitted to the governmental entity;
- 713 [(B)] (ii) a description of the conduct that the governmental entity claims
 714 demonstrates that the respondent is a vexatious requester;
- 715 [(C)] (iii) a statement of the relief the governmental entity seeks; and
- 716 [(D)] (iv) a sworn declaration or an unsworn declaration, as those terms are defined in
 717 Section 78B-18a-102.
- 718 (c) On the day the governmental entity files a petition under Subsection (2)(a), the
 719 governmental entity shall send a copy of the petition to the respondent.
- 720 (3)(a) Except as provided in Subsection (3)(c), no later than seven business days after
 721 receiving the petition[~~the executive secretary~~] , the director shall schedule a hearing[
 722 ~~for the committee~~] to consider the petition, to be held:
- 723 (i)(A) at the next [~~regularly scheduled committee meeting falling~~]
 724 regularly-scheduled hearing date that is at least 16 calendar days after the [~~date~~]
 725 day on which the petition is filed but no later than 64 calendar days after the [~~date~~]
 726 date] day on which the petition is filed; or
- 727 (B) at a [~~regularly scheduled committee meeting~~] regularly-scheduled hearing date
 728 that is later than the period described in Subsection (3)(a)(i)(A) if the later [~~committee meeting~~]
 729 hearing date is the first [~~regularly scheduled committee meeting~~]
 730 regularly-scheduled hearing date at which there are fewer than 10
 731 appeals scheduled to be heard; or
- 732 (ii) to the extent practicable, at a date sooner than a period described in Subsection
 733 (3)(a)(i) if the governmental entity:
- 734 (A) requests an expedited hearing; and
- 735 (B) shows good cause for the expedited hearing.
- 736 (b) If the [~~executive secretary~~] director schedules a hearing under Subsection (3)(a), the [~~executive secretary~~]
 737 director shall:
- 738 [(i)] ~~send a copy of the petition to each member of the committee;~~
- 739 [(ii)] (i) send a copy of the notice of hearing to the governmental entity[;] and the
 740 respondent[; ~~and each member of the committee~~]; and
- 741 [(iii)] (ii) if applicable, send a copy of the respondent's statement under Subsection [~~(3)(c)(ii)~~]
 742 (3)(c)(ii)(B) to the governmental entity[~~and each member of the~~

- 743 committee].
- 744 [(e)(i) The executive secretary may decline to schedule a hearing if:]
- 745 [(A) the executive secretary recommends that the committee deny the petition
- 746 without a hearing because the petition does not warrant a hearing;]
- 747 [(B) the executive secretary consults with the chair of the committee and at least
- 748 one other member of the committee; and]
- 749 [(C) the chair of the committee and all committee members with whom the
- 750 executive secretary consults under this Subsection (3)(c)(i) agree with the
- 751 executive secretary's recommendation to deny the petition without a hearing.]
- 752 [(ii) The executive secretary may, in making the determination described in
- 753 Subsection (3)(c)(i)(A), request that the respondent submit a written response to
- 754 the petition.]
- 755 [(d) If the executive secretary declines to schedule a hearing in accordance with
- 756 Subsection (3)(c):]
- 757 [(i) the executive secretary shall send a notice to the governmental entity and the
- 758 respondent indicating that the request for a hearing has been denied and the
- 759 reasons for the denial; and]
- 760 [(ii) the committee shall:]
- 761 [(A) vote at the committee's next regular meeting to accept or reject the
- 762 recommendation to deny the petition without a hearing;]
- 763 [(B) issue an order that includes the reasons for the committee's decision to accept
- 764 or reject the recommendation; and]
- 765 [(C) if the committee rejects the recommendation to deny the petition without a
- 766 hearing, direct the executive secretary to schedule a hearing as provided in
- 767 Subsection (3)(a).]
- 768 (c) The director may decline to schedule a hearing if:
- 769 (i) the director makes an initial determination that the petition should be denied
- 770 without a hearing; and
- 771 (ii) before the director makes a final ruling to deny the petition, the director:
- 772 (A) provides the parties with notice of the initial determination described in
- 773 Subsection (3)(c)(i), including the reasons for the initial determination;
- 774 (B) provides the parties with a reasonable opportunity to respond to the initial
- 775 determination described in Subsection (3)(c)(i); and
- 776 (C) provides the respondent with a reasonable opportunity to submit a written

- 777 response to the petition.
- 778 (d) If, after complying with Subsection (3)(c), the director makes a final ruling denying
779 the petition without a hearing, the director shall:
- 780 (i) issue an order denying the petition; and
781 (ii) include in the order the reasons for denying the petition and the reasons for
782 making the ruling without a hearing.
- 783 (e) If, after complying with Subsection (3)(c), the director determines that a hearing
784 should be held, the director shall schedule a hearing in accordance with Subsection
785 (3)(a).
- 786 (4)(a) No later than five business days before the day of the hearing, the respondent may
787 submit to the [executive secretary] director and the governmental entity a written
788 statement in response to the governmental entity's petition.
- 789 (b) The written statement described in Subsection (4)(a) may be the same document as
790 the respondent's written response described in Subsection [~~(3)(e)(ii)~~] (3)(c)(ii)(C).
- 791 (5) No later than 10 business days before the day of a hearing under this section, a person
792 whose legal interests may be substantially affected by the proceeding may file a request
793 for intervention with the [committee] director as provided in Subsection 63G-2-403(6).
- 794 (6) If a respondent fails to submit a written statement under Subsection (4) or fails to appear
795 at the hearing, the [committee] director shall:
- 796 (a) cancel the hearing; or
797 (b) hold the hearing in accordance with Subsection (7).
- 798 (7)(a) If the [committee] director holds a hearing scheduled under Subsection (3), the [
799 committee] director shall:
- 800 (i) allow the governmental entity to testify, present evidence, and comment on the
801 issues; and
802 (ii) allow the respondent to testify, present evidence, and comment on the issues if
803 the respondent appears at the hearing.
- 804 (b) At the hearing, the [committee] director may allow another interested person to
805 comment on the issues.
- 806 (c)(i) Discovery is prohibited, but the [committee] director may issue subpoenas or
807 other orders to compel production of necessary testimony or evidence.
- 808 (ii) If the subject of a [committee] director's subpoena disobeys or fails to comply
809 with the subpoena, the [committee] director may file a motion with the district
810 court for an order to compel obedience to the subpoena.

- 811 (8)(a) No later than seven business days after the day on which a hearing is held as
812 scheduled under Subsection (3) or the date on which a hearing cancelled under
813 Subsection (6) was scheduled to be held, the [~~e~~committee] director shall:
- 814 (i) determine, in accordance with Subsection (9), whether the governmental entity has
815 demonstrated that the respondent is a vexatious requester; and
- 816 (ii) issue a signed order that grants or denies the petition in whole or in part.
- 817 (b) Upon granting the petition in whole or in part, the [~~e~~committee] director may order
818 that the governmental entity is not required to fulfill requests from the respondent or
819 a person that submits a request on the respondent's behalf for a period of time that
820 may not exceed one year.
- 821 (c) The [~~e~~committee's] director's order shall contain:
- 822 (i) a statement of the reasons for the [~~e~~committee's-] director's decision;
- 823 (ii) if the petition is granted in whole or in part, a specific description of the conduct
824 the [~~e~~committee] director determines demonstrates that the respondent is a
825 vexatious requester, including any conduct the [~~e~~committee] director finds to
826 constitute an abuse of the right of access to information under this chapter or a
827 substantial interference with the operations of the governmental entity;
- 828 (iii) a statement that the respondent or governmental entity may seek judicial review
829 of the [~~e~~committee's] director's decision in district court as provided in Section
830 63G-2-404; and
- 831 (iv) a brief summary of the judicial review process, the time limits for seeking
832 judicial review, and a notice that, in order to protect applicable rights in
833 connection with the judicial review, the person seeking judicial review of the [~~e~~
834 committee's] director's decision may wish to seek advice from an attorney.
- 835 (9) In determining whether a governmental entity has demonstrated that the respondent is a
836 vexatious requester, the [~~e~~committee] director shall consider:
- 837 [~~(a) the interests described in Section 63G-2-102;~~]
- 838 [~~(b)~~] (a) as applicable:
- 839 (i) the number of requests the respondent has submitted to the governmental entity,
840 including the number of pending record requests;
- 841 (ii) the scope, nature, content, language, and subject matter of record requests the
842 respondent has submitted to the governmental entity;
- 843 (iii) the nature, content, language, and subject matter of any communications to the
844 governmental entity related to a record request of the respondent; and

- 845 (iv) any pattern of conduct that the [~~e~~committee] director determines to constitute:
- 846 (A) an abuse of the right of access to information under this chapter; or
- 847 (B) substantial interference with the operations of the governmental entity; and
- 848 [~~e~~] (b) any other factor the [~~e~~committee] director considers relevant.
- 849 (10)(a) A governmental entity or respondent aggrieved by the [~~e~~committee's] director's
- 850 decision under this section may seek judicial review of the decision as provided in
- 851 Section 63G-2-404.
- 852 (b) In a judicial review under Subsection (10)(a), the court may award reasonable
- 853 attorney fees to a respondent if:
- 854 (i) the respondent substantially prevails; and
- 855 (ii) the court determines that:
- 856 (A) the petition filed by the governmental entity under Subsection (2) is without
- 857 merit; and
- 858 (B) the governmental entity's actions in filing the petition lack a reasonable basis
- 859 in fact or law.
- 860 (c) Except for the waiver of immunity in Subsection 63G-7-301(2)(e), a claim for
- 861 attorney fees under this Subsection (10) is not subject to Chapter 7, Governmental
- 862 Immunity Act of Utah.
- 863 (11) Notwithstanding any other provision of this chapter, a records request that a
- 864 governmental entity is not required to fulfill in accordance with an order issued under
- 865 this section may not be the subject of an appeal under Part 4, Appeals.
- 866 (12) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the [~~e~~
- 867 committee] director shall make rules to implement the procedures and requirements
- 868 described in this section.
- 869 Section 12. Section **63G-2-309** is amended to read:
- 870 **63G-2-309 . Confidentiality claims.**
- 871 (1)(a)(i) Any person who provides to a governmental entity a record that the person
- 872 believes should be protected under Subsection 63G-2-305(1) or (2) or both
- 873 Subsections 63G-2-305(1) and (2) shall provide with the record:
- 874 (A) a written claim of business confidentiality; and
- 875 (B) a concise statement of reasons supporting the claim of business confidentiality.
- 876 (ii) Any of the following who provides to an institution within the state system of
- 877 higher education defined in Section 53B-1-102 a record that the person or
- 878 governmental entity believes should be protected under Subsection

- 879 63G-2-305(40)(a)(ii) or (vi) or both Subsections 63G-2-305(40)(a)(ii) and (vi)
880 shall provide the institution within the state system of higher education a written
881 claim of business confidentiality in accordance with Section 53B-16-304:
882 (A) a person;
883 (B) a federal governmental entity;
884 (C) a state governmental entity; or
885 (D) a local governmental entity.
- 886 (b) A person or governmental entity who complies with this Subsection (1) shall be
887 notified by the governmental entity to whom the request for a record is made if:
888 (i) a record claimed to be protected under one of the following is classified public:
889 (A) Subsection 63G-2-305(1);
890 (B) Subsection 63G-2-305(2);
891 (C) Subsection 63G-2-305(40)(a)(ii);
892 (D) Subsection 63G-2-305(40)(a)(vi); or
893 (E) a combination of the provisions described in Subsections (1)(b)(i)(A) through
894 (D); or
895 (ii) the governmental entity to whom the request for a record is made determines that
896 the record claimed to be protected under a provision listed in Subsection (1)(b)(i)
897 should be released after balancing interests under Subsection 63G-2-201(5)(b) or
898 63G-2-401(6).
- 899 (c) A person who makes a claim of business confidentiality under this Subsection (1)
900 shall protect, defend, and indemnify the governmental entity that retains the record,
901 and all staff and employees of the governmental entity from and against any claims,
902 liability, or damages resulting from or arising from a denial of access to the record as
903 a protected record based on the claim of business confidentiality.
- 904 (2)(a) Except as provided in Subsection (2)(b) or by court order, the governmental entity
905 to whom the request for a record is made may not disclose a record claimed to be
906 protected under a provision listed in Subsection (1)(b)(i) but which the governmental
907 entity or ~~[State Records Committee]~~ the director of the Government Records Office
908 determines should be disclosed until the period in which to bring an appeal expires or
909 the end of the appeals process, including judicial appeal.
- 910 (b) Subsection (2)(a) does not apply where the claimant, after notice, has waived the
911 claim by not appealing or intervening before the ~~[State Records Committee]~~ director
912 of the Government Records Office.

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

915 Section 13. Section **63G-2-400.5** is amended to read:

916 **63G-2-400.5 . Definitions.**

917 As used in this part:

918 (1) "Access denial" means a governmental entity's denial, under Subsection 63G-2-204(9)
919 or Section 63G-2-205, in whole or in part, of a record request.

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

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

923 [(3)] (4) "Interested party" means a person, other than a requester, who is aggrieved by an
924 access denial or an appellate affirmation, regardless of whether [~~or not~~] the person
925 participated in proceedings leading to the access denial or appellate affirmation.

926 [(4)] (5) "Local appeals board" means an appeals board established by a political
927 subdivision under Subsection 63G-2-701(5)(c).

928 [(5)] (6) "Record request" means a request for a record under Section 63G-2-204.

929 [(6)] (7) "Records[~~committee~~] appellant" means:

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

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

934 [(7)] (8) "Requester" means a person who submits a record request to a governmental entity.

935 Section 14. Section **63G-2-401** is amended to read:

936 **63G-2-401 . Appeal to chief administrative officer -- Notice of the decision of the**
937 **appeal.**

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

942 (i) for an access denial:

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

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

- 947 subsection applies; or
- 948 (ii) for a denial of a fee waiver, the date the governmental entity notifies the requester
949 that the fee waiver is denied.
- 950 (b) If a governmental entity claims extraordinary circumstances and specifies the date
951 when the records will be available under Subsection 63G-2-204(4), and, if the
952 requester believes the extraordinary circumstances do not exist or that the date
953 specified is unreasonable, the requester may appeal the governmental entity's claim
954 of extraordinary circumstances or date for compliance to the chief administrative
955 officer by filing a notice of appeal with the chief administrative officer within 30
956 days after notification of a claim of extraordinary circumstances by the governmental
957 entity, despite the lack of a "determination" or its equivalent under Subsection
958 63G-2-204(9).
- 959 (2) A notice of appeal shall contain:
- 960 (a) the name, mailing address, and daytime telephone number of the requester or
961 interested party; and
- 962 (b) the relief sought.
- 963 (3) The requester or interested party may file a short statement of facts, reasons, and legal
964 authority in support of the appeal.
- 965 (4)(a) If the appeal involves a record that is the subject of a business confidentiality
966 claim under Section 63G-2-309, the chief administrative officer shall:
- 967 (i) send notice of the appeal to the business confidentiality claimant within three
968 business days after receiving notice, except that if notice under this section must
969 be given to more than 35 persons, it shall be given as soon as reasonably possible;
970 and
- 971 (ii) send notice of the business confidentiality claim and the schedule for the chief
972 administrative officer's determination to the requester or interested party within
973 three business days after receiving notice of the appeal.
- 974 (b) The business confidentiality claimant shall have seven business days after notice is
975 sent by the administrative officer to submit further support for the claim of business
976 confidentiality.
- 977 (5)(a) The chief administrative officer shall make a decision on the appeal within:
- 978 (i)(A) 10 business days after the chief administrative officer's receipt of the notice
979 of appeal; or
- 980 (B) five business days after the chief administrative officer's receipt of the notice

- 981 of appeal, if the requester or interested party demonstrates that an expedited
982 decision benefits the public rather than the requester or interested party; or
983 (ii) 12 business days after the governmental entity sends the notice of appeal to a
984 person who submitted a claim of business confidentiality.
- 985 (b)(i) If the chief administrative officer fails to make a decision on an appeal of an
986 access denial within the time specified in Subsection (5)(a), the failure is the
987 equivalent of a decision affirming the access denial.
- 988 (ii) If the chief administrative officer fails to make a decision on an appeal under
989 Subsection (1)(b) within the time specified in Subsection (5)(a), the failure is the
990 equivalent of a decision affirming the claim of extraordinary circumstances or the
991 reasonableness of the date specified when the records will be available.
- 992 (c) The provisions of this section notwithstanding, the parties participating in the
993 proceeding may, by agreement, extend the time periods specified in this section.
- 994 (6) Except as provided in Section 63G-2-406, the chief administrative officer may, upon
995 consideration and weighing of the various interests and public policies pertinent to the
996 classification and disclosure or nondisclosure, order the disclosure of information
997 properly classified as private under Subsection 63G-2-302(2) or protected under Section
998 63G-2-305 if the interests favoring access are greater than or equal to the interests
999 favoring restriction of access.
- 1000 (7)(a) The governmental entity shall send written notice of the chief administrative
1001 officer's decision to all participants.
- 1002 (b) If the chief administrative officer's decision is to affirm the access denial in whole or
1003 in part or to affirm the fee waiver denial, the notice under Subsection (7)(a) shall
1004 include:
- 1005 (i) a statement that the requester has a right under Section [~~63A-12-111~~] 63A-12-204
1006 to request the government records ombudsman to mediate the dispute between the
1007 requester and the governmental entity concerning the access denial or the fee
1008 waiver denial;
- 1009 (ii) a statement that the requester or interested party has the right to appeal the
1010 decision, as provided in Section 63G-2-402, to:
- 1011 (A) the [~~State Records Committee~~] director or district court; or
1012 (B) the local appeals board, if the governmental entity is a political subdivision
1013 and the governmental entity has established a local appeals board;
- 1014 (iii) the time limits for filing an appeal described in Subsection (7)(b)(ii), including

- 1015 an explanation of a suspension of the time limits, as provided in Subsections
 1016 63G-2-403(1)(c) and 63G-2-404(1)(b), for a requester if the requester seeks
 1017 mediation under Section [~~63A-12-111~~] 63A-12-204; and
- 1018 (iv) the name and business address of:
 1019 [~~(A) the executive secretary of the State Records Committee;~~]
 1020 (A) the director;
- 1021 (B) the individual designated as the contact individual for the appeals board, if the
 1022 governmental entity is a political subdivision that has established an appeals
 1023 board under Subsection 63G-2-701(5)(c); and
- 1024 (C) the government records ombudsman.
- 1025 (8)(a) A person aggrieved by a governmental entity's classification or designation
 1026 determination under this chapter, but who is not requesting access to the records, may
 1027 appeal that determination using the procedures provided in this section.
- 1028 (b) If a nonrequester is the only appellant, the procedures provided in this section shall
 1029 apply, except that the decision on the appeal shall be made within 30 days [~~after~~
 1030 ~~receiving~~] after the day on which the appellant files the notice of appeal.
- 1031 (9) The duties of the chief administrative officer under this section may be delegated.
 1032 Section 15. Section **63G-2-402** is amended to read:
 1033 **63G-2-402 . Appealing a decision of a chief administrative officer.**
- 1034 (1) If the decision of the chief administrative officer of a governmental entity under Section
 1035 63G-2-401 is to affirm the denial of a record request or to affirm the denial of a fee
 1036 waiver, the requester may:
- 1037 (a)(i) appeal the decision to the [~~State Records Committee~~] director, as provided in
 1038 Section 63G-2-403; or
- 1039 (ii) petition for judicial review of the decision in district court, as provided in Section
 1040 63G-2-404;
- 1041 (b) seek mediation of the access denial or fee waiver denial under Subsection [
 1042 ~~63A-12-111(2)(e)~~] 63A-12-204(1)(a)(iii); or
- 1043 (c) appeal the decision to the local appeals board if:
- 1044 (i) the decision is of a chief administrative officer of a governmental entity that is a
 1045 political subdivision; and
- 1046 (ii) the political subdivision has established a local appeals board.
- 1047 (2) A requester who appeals a chief administrative officer's decision to the [~~State Records~~
 1048 ~~Committee~~] director or a local appeals board does not lose or waive the right to seek

- 1049 judicial review of the decision of the [~~State Records Committee~~] director or the local
 1050 appeals board.
- 1051 (3) As provided in Section 63G-2-403, an interested party may appeal to the [~~State Records~~
 1052 ~~Committee~~] director of the Government Records Office a chief administrative officer's
 1053 decision under Section 63G-2-401 affirming an access denial.
- 1054 Section 16. Section **63G-2-403** is amended to read:
- 1055 **63G-2-403 . Appeals to the director of the Government Records Office.**
- 1056 (1)(a) A records [~~committee~~]appellant appeals to the [~~State Records Committee~~] director
 1057 by filing a notice of appeal with the [~~executive secretary of the State Records~~
 1058 ~~Committee~~] director no later than 30 days after [~~the date of issuance of~~] the day on
 1059 which the decision being appealed is issued.
- 1060 (b) Notwithstanding Subsection (1)(a), a requester may file a notice of appeal with the [
 1061 ~~executive secretary of the State Records Committee~~] director no later than 45 days
 1062 after the day on which the record request is made if:
- 1063 (i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and
 1064 (ii) the chief administrative officer fails to make a decision under Section 63G-2-401.
- 1065 (c) The time for a requester to file a notice of appeal under Subsection (1)(a) or (b) is
 1066 suspended for the period of time that:
- 1067 (i) begins on the date the requester submits a request under Section [~~63A-12-111~~]
 1068 63A-12-204 for the government records ombudsman to mediate the dispute
 1069 between the requester and the governmental entity; and
- 1070 (ii) ends the earlier of the following dates:
- 1071 (A) the date that the government records ombudsman certifies in writing that the
 1072 mediation is concluded; or
- 1073 (B) the date that the government records ombudsman certifies in writing that the
 1074 mediation did not occur or was not concluded because of a lack of the required
 1075 consent.
- 1076 (2) The notice of appeal shall:
- 1077 (a) contain the name, mailing address, and daytime telephone number of the records [
 1078 ~~committee~~]appellant;
- 1079 (b) be accompanied by a copy of the decision being appealed; and
- 1080 (c) state the relief sought.
- 1081 (3) The records [~~committee~~]appellant:
- 1082 (a) shall, on the day on which the notice of appeal is filed with the [~~State Records~~

- 1083 ~~Committee~~ director, serve a copy of the notice of appeal on:
- 1084 (i) the governmental entity whose access denial or fee waiver denial is the subject of
- 1085 the appeal, if the records [~~e~~committee]appellant is a requester or interested party; or
- 1086 (ii) the requester or interested party who is a party to the local appeals board
- 1087 proceeding that resulted in the decision that the political subdivision is appealing
- 1088 to the [~~e~~committee] director, if the records [~~e~~committee]appellant is a political
- 1089 subdivision; and
- 1090 (b) may file a short statement of facts, reasons, and legal authority in support of the
- 1091 appeal.
- 1092 (4)(a) Except as provided in Subsections (4)(b) and (c), no later than seven business
- 1093 days after receiving a notice of appeal, the [~~executive secretary of the State Records~~
- 1094 ~~Committee~~] director shall:
- 1095 (i) schedule a hearing for the [~~State Records Committee~~] director to discuss the appeal
- 1096 at the next regularly scheduled [~~committee meeting falling~~] hearing date that is at
- 1097 least 16 calendar days after the date the notice of appeal is filed but no [~~longer~~]
- 1098 later than 64 calendar days after the date the notice of appeal [~~was-~~] is filed, except
- 1099 that the [~~e~~committee] director may schedule an expedited hearing upon application
- 1100 of the records [~~e~~committee]appellant and good cause shown;
- 1101 (ii) send a copy of the notice of hearing to the records [~~e~~committee]appellant; and
- 1102 (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing
- 1103 to:
- 1104 [~~(A) each member of the State Records Committee;~~]
- 1105 [~~(B)~~] (A) the records officer and the chief administrative officer of the
- 1106 governmental entity whose access denial is the subject of the appeal, if the
- 1107 records [~~e~~committee]appellant is a requester or interested party;
- 1108 [~~(C)~~] (B) any person who made a business confidentiality claim under Section
- 1109 63G-2-309 for a record that is the subject of the appeal; and
- 1110 [~~(D)~~] (C) all persons who participated in the proceedings before the governmental
- 1111 entity's chief administrative officer, if the appeal is of the chief administrative
- 1112 officer's decision affirming an access denial.
- 1113 (b)(i) The [~~executive secretary of the State Records Committee~~] director may decline
- 1114 to schedule a hearing if the record series that is the subject of the appeal has been
- 1115 found by the [~~e~~committee] director in a previous hearing involving the same
- 1116 governmental entity to be appropriately classified as private, controlled, or

- 1117 protected.
- 1118 (ii)~~(A)~~ If the ~~[executive secretary of the State Records Committee]~~ director
- 1119 declines to schedule a hearing, the ~~[executive secretary]~~ director shall send a
- 1120 notice to the records ~~[committee]~~ appellant indicating that the request for
- 1121 hearing has been denied and the reason for the denial.
- 1122 ~~[(B) The State Records Committee shall make rules to implement this section as~~
- 1123 ~~provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.]~~
- 1124 (c) The ~~[executive secretary of the State Records Committee]~~ director may schedule a
- 1125 hearing on an appeal to the ~~[State Records Committee at]~~ director on a regularly~~[-]~~ -
- 1126 scheduled ~~[State Records Committee meeting]~~ hearing date that is later than the
- 1127 period described in Subsection (4)(a)(i) if that ~~[committee meeting]~~ hearing date is
- 1128 the first regularly~~[-]~~ -scheduled ~~[State Records Committee meeting]~~ hearing date at
- 1129 which there are fewer than 10 appeals scheduled to be heard.
- 1130 (5)(a) No later than five business days before the day of the hearing, a governmental
- 1131 entity shall submit to the ~~[executive secretary of the State Records Committee]~~
- 1132 director a written statement of facts, reasons, and legal authority in support of the
- 1133 governmental entity's position.
- 1134 (b) The governmental entity shall send a copy of the written statement by first class
- 1135 mail, postage prepaid, to the requester or interested party involved in the appeal. [
- 1136 ~~The executive secretary shall forward a copy of the written statement to each member~~
- 1137 ~~of the State Records Committee.]~~
- 1138 (6)(a) No later than 10 business days after the day on which the ~~[executive secretary]~~
- 1139 director sends the notice of appeal, a person whose legal interests may be
- 1140 substantially affected by the proceeding may file a request for intervention with the [
- 1141 ~~State Records Committee]~~ director.
- 1142 (b) Any written statement of facts, reasons, and legal authority in support of the
- 1143 intervener's position shall be filed with the request for intervention.
- 1144 (c) The person seeking intervention shall provide copies of the statement described in
- 1145 Subsection (6)(b) to all parties to the proceedings before the ~~[State Records~~
- 1146 ~~Committee]~~ director.
- 1147 (7) The ~~[State Records Committee]~~ director shall hold a hearing within the period of time
- 1148 described in Subsection (4).
- 1149 (8) At the hearing, the ~~[State Records Committee]~~ director:
- 1150 (a) shall allow the parties to testify, present evidence, and comment on the issues~~[-]~~ ~~The~~

- 1151 ~~committee~~] ; and
- 1152 (b) may allow other interested persons to comment on the issues.
- 1153 (9)(a)(i) The ~~[State Records Committee]~~ director:
- 1154 (A) may review the disputed records; and
- 1155 (B) shall review the disputed records, if the ~~[committee]~~ director is weighing the
- 1156 various interests under Subsection (11).
- 1157 (ii) A review of the disputed records under Subsection (9)(a)(i) shall be in camera.
- 1158 (b) ~~[Members of the State Records Committee]~~ The director may not disclose any
- 1159 information or record reviewed by the ~~[committee]~~ director in camera unless the
- 1160 disclosure is otherwise authorized by this chapter.
- 1161 (10)(a) Discovery is prohibited, but the ~~[State Records Committee]~~ director may issue
- 1162 subpoenas or other orders to compel production of necessary evidence.
- 1163 (b) When the subject of a ~~[State Records Committee]~~ subpoena issued by the director
- 1164 disobeys or fails to comply with the subpoena, the ~~[committee]~~ director may file a
- 1165 motion for an order to compel obedience to the subpoena with the district court.
- 1166 (c)(i) The ~~[State Records Committee's]~~ director's review shall be de novo, if the
- 1167 appeal is an appeal from a decision of a chief administrative officer:
- 1168 (A) issued under Section 63G-2-401; or
- 1169 (B) issued by a chief administrative officer of a political subdivision that has not
- 1170 established a local appeals board.
- 1171 (ii) For an appeal from a decision of a local appeals board, the ~~[State Records~~
- 1172 ~~Committee]~~ director shall review and consider the decision of the local appeals
- 1173 board.
- 1174 (11)(a) No later than seven business days after the day of the hearing, the ~~[State Records~~
- 1175 ~~Committee]~~ director shall issue a signed order:
- 1176 (i) granting the relief sought, in whole or in part; or
- 1177 (ii) upholding the governmental entity's access denial, in whole or in part.
- 1178 (b) Except as provided in Section 63G-2-406, the ~~[State Records Committee]~~ director
- 1179 may, upon consideration and weighing of the various interests and public policies
- 1180 pertinent to the classification and disclosure or nondisclosure, order the disclosure of
- 1181 information properly classified as private, controlled, or protected if the public
- 1182 interest favoring access is greater than or equal to the interest favoring restriction of
- 1183 access.
- 1184 (c) In making a determination under Subsection (11)(b), the ~~[State Records Committee]~~

- 1185 director shall consider and, where appropriate, limit the requester's or interested
1186 party's use and further disclosure of the record in order to protect:
- 1187 (i) privacy interests in the case of a private or controlled record;
1188 (ii) business confidentiality interests in the case of a record protected under
1189 Subsection 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and
1190 (iii) privacy interests or the public interest in the case of other protected records.
- 1191 (12) The order of the [~~State Records Committee~~] director shall include:
- 1192 (a) a statement of reasons for the decision, including citations to this chapter, court rule
1193 or order, another state statute, federal statute, or federal regulation that governs
1194 disclosure of the record, if the citations do not disclose private, controlled, or
1195 protected information;
- 1196 (b) a description of the record or portions of the record to which access [~~was~~] is ordered
1197 or denied, if the description does not disclose private, controlled, or protected
1198 information or information exempt from disclosure under Subsection 63G-2-201(3)(b);
- 1199 (c) a statement that any party to the proceeding before the [~~State Records Committee~~]
1200 director may appeal the [~~committee's~~] director's decision to district court; and
- 1201 (d) a brief summary of the appeals process, the time limits for filing an appeal, and a
1202 notice that in order to protect its rights on appeal, the party may wish to seek advice
1203 from an attorney.
- 1204 (13)(a) If the [~~State Records Committee~~] director fails to issue a decision within 73
1205 calendar days after the day of the filing of the notice of appeal, that failure is the
1206 equivalent of an order denying the appeal.[-]
- 1207 (b) A records [~~committee~~]appellant shall notify the [~~State Records Committee~~] director
1208 in writing if the records [~~committee~~]appellant considers the appeal denied.
- 1209 (14) A party to a proceeding before the [~~State Records Committee~~] director may seek
1210 judicial review in district court of a [~~State Records Committee~~] director's order by filing
1211 a petition for review of the order as provided in Section 63G-2-404.
- 1212 (15)(a) Unless a notice of intent to appeal is filed under Subsection (15)(b), each party to
1213 the proceeding shall comply with the order of the [~~State Records Committee~~] director.
- 1214 (b) If a party disagrees with the order of the [~~State Records Committee~~] director, that
1215 party may file a notice of intent to appeal the order.
- 1216 (c) If the [~~State Records Committee~~] director orders the governmental entity to produce
1217 a record and no appeal is filed, or if, as a result of the appeal, the governmental entity
1218 is required to produce a record, the governmental entity shall:

- 1219 (i) produce the record; and
- 1220 (ii) file a notice of compliance with the [~~e~~committee] director.
- 1221 (d)(i) If the governmental entity that is ordered to produce a record fails to file a
- 1222 notice of compliance or a notice of intent to appeal, the [~~State Records Committee~~]
- 1223 director may do either or both of the following:
- 1224 (A) impose a civil penalty of up to \$500 for each day of continuing
- 1225 noncompliance; or
- 1226 (B) send written notice of the governmental entity's noncompliance to the
- 1227 governor.
- 1228 (ii) In imposing a civil penalty, the [~~State Records Committee~~] director shall consider
- 1229 the gravity and circumstances of the violation, including whether the failure to
- 1230 comply was due to neglect or was willful or intentional.
- 1231 Section 17. Section **63G-2-404** is amended to read:
- 1232 **63G-2-404 . Judicial review.**
- 1233 (1)(a) A petition for judicial review of an order or decision, as allowed under this part, in
- 1234 Section 63G-2-209, or in Subsection 63G-2-701(6)(a)(ii), shall be filed no later than
- 1235 30 days after the date of the order or decision, subject to Subsection (1)(b).
- 1236 (b) The time for a requester to file a petition for judicial review under Subsection (1)(a)
- 1237 is suspended for the period of time that:
- 1238 (i) begins the date the requester submits a request under Section [~~63A-12-111~~]
- 1239 63A-12-204 for the government records ombudsman to mediate the dispute
- 1240 between the requester and the governmental entity; and
- 1241 (ii) ends the earlier of the following dates:
- 1242 (A) the date that the government records ombudsman certifies in writing that the
- 1243 mediation is concluded; or
- 1244 (B) the date that the government records ombudsman certifies in writing that the
- 1245 mediation did not occur or was not concluded because of a lack of the required
- 1246 consent.
- 1247 (2)(a) A petition for judicial review is a complaint governed by the Utah Rules of Civil
- 1248 Procedure and shall contain:
- 1249 (i) the petitioner's name and mailing address;
- 1250 (ii) a copy of the [~~State Records Committee~~] director's order from which the appeal is
- 1251 taken, if the petitioner is seeking judicial review of an order of the [~~State Records~~
- 1252 ~~Committee~~] director;

- 1253 (iii) the name and mailing address of the governmental entity that issued the initial
1254 determination with a copy of that determination;
- 1255 (iv) a request for relief specifying the type and extent of relief requested; and
1256 (v) a statement of the reasons why the petitioner is entitled to relief.
- 1257 (b) Except in exceptional circumstances, a petition for judicial review may not raise an
1258 issue that was not raised in the underlying appeal and order.
- 1259 (3) If the appeal is based on the denial of access to a protected record based on a claim of
1260 business confidentiality, the court shall allow the claimant of business confidentiality to
1261 provide to the court the reasons for the claim of business confidentiality.
- 1262 (4) All additional pleadings and proceedings in the district court are governed by the Utah
1263 Rules of Civil Procedure.
- 1264 (5)(a) The district court may review the disputed records.~~[-The-]~~
- 1265 (b) A review described in Subsection (5)(a) shall be in camera.
- 1266 (6)(a) The court shall:
- 1267 (i) make the court's decision de novo, but, for a petition seeking judicial review of a [
1268 ~~State Records Committee-~~ director's order, allow introduction of evidence
1269 presented to the [~~State Records Committee-~~ director;
- 1270 (ii) determine all questions of fact and law without a jury; and
1271 (iii) decide the issue at the earliest practical opportunity.
- 1272 (b) A court may remand a petition for judicial review to the [~~State Records Committee-~~
1273 director if:
- 1274 (i) the remand is to allow the [~~State Records Committee-~~ director to decide an issue
1275 that:
- 1276 (A) involves access to a record; and
1277 (B) the [~~State Records Committee has not previously addressed-~~ director did not
1278 address in the proceeding that led to the petition for judicial review; and
- 1279 (ii) the court determines that remanding to the [~~State Records Committee-~~ director is
1280 in the best interests of justice.
- 1281 (7)(a) Except as provided in Section 63G-2-406, the court may, upon consideration and
1282 weighing of the various interests and public policies pertinent to the classification
1283 and disclosure or nondisclosure, order the disclosure of information properly
1284 classified as private, controlled, or protected if the interest favoring access is greater
1285 than or equal to the interest favoring restriction of access.
- 1286 (b) The court shall consider and, where appropriate, limit the requester's use and further

1287 disclosure of the record in order to protect privacy interests in the case of private or
1288 controlled records, business confidentiality interests in the case of records protected
1289 under Subsections 63G-2-305(1) and (2), and privacy interests or the public interest
1290 in the case of other protected records.

1291 Section 18. Section **63G-2-701** is amended to read:

1292 **63G-2-701 . Political subdivisions may adopt ordinances in compliance with**
1293 **chapter -- Appeal process.**

1294 (1) As used in this section:

1295 (a) "Access denial" means the same as that term is defined in Section 63G-2-400.5.

1296 (b) "Interested party" means the same as that term is defined in Section 63G-2-400.5.

1297 (c) "Requester" means the same as that term is defined in Section 63G-2-400.5.

1298 (2)(a) Each political subdivision may adopt an ordinance or a policy applicable
1299 throughout its jurisdiction relating to information practices including classification,
1300 designation, access, denials, segregation, appeals, management, retention, and
1301 amendment of records.

1302 (b) The ordinance or policy shall comply with the criteria set forth in this section.

1303 (c) If any political subdivision does not adopt and maintain an ordinance or policy, then
1304 that political subdivision is subject to this chapter.

1305 (d) Notwithstanding the adoption of an ordinance or policy, each political subdivision is
1306 subject to Part 1, General Provisions, Part 3, Classification, and Sections 63A-12-105,
1307 63A-12-107, 63G-2-201, 63G-2-202, 63G-2-205, 63G-2-206, 63G-2-601, and
1308 63G-2-602.

1309 (e) Every ordinance, policy, or amendment to the ordinance or policy shall be filed with
1310 the state archives no later than 30 days after its effective date.

1311 (f) The political subdivision shall also report to the state archives all retention schedules,
1312 and all designations and classifications applied to record series maintained by the
1313 political subdivision.

1314 (g) The report required by Subsection (2)(f) is notification to state archives of the
1315 political subdivision's retention schedules, designations, and classifications. The
1316 report is not subject to approval by state archives. If state archives determines that a
1317 different retention schedule is needed for state purposes, state archives shall notify
1318 the political subdivision of the state's retention schedule for the records and shall
1319 maintain the records if requested to do so under Subsection 63A-12-105(2).

1320 (3) Each ordinance or policy relating to information practices shall:

- 1321 (a) provide standards for the classification and designation of the records of the political
1322 subdivision as public, private, controlled, or protected in accordance with Part 3,
1323 Classification;
- 1324 (b) require the classification of the records of the political subdivision in accordance
1325 with those standards;
- 1326 (c) provide guidelines for establishment of fees in accordance with Section 63G-2-203;
1327 and
- 1328 (d) provide standards for the management and retention of the records of the political
1329 subdivision comparable to Section 63A-12-103.
- 1330 (4)(a) Each ordinance or policy shall establish access criteria, procedures, and response
1331 times for requests to inspect, obtain, or amend records of the political subdivision,
1332 and time limits for appeals consistent with this chapter.
- 1333 (b) In establishing response times for access requests and time limits for appeals, the
1334 political subdivision may establish reasonable time frames different than those set out
1335 in Section 63G-2-204 and Part 4, Appeals, if it determines that the resources of the
1336 political subdivision are insufficient to meet the requirements of those sections.
- 1337 (5)(a) A political subdivision shall establish an appeals process for persons aggrieved by
1338 classification, designation, or access decisions.
- 1339 (b) A political subdivision's appeals process shall include a process for a requester or
1340 interested party to appeal an access denial to a person designated by the political
1341 subdivision as the chief administrative officer for purposes of an appeal under
1342 Section 63G-2-401.
- 1343 (c)(i) A political subdivision may establish an appeals board to decide an appeal of a
1344 decision of the chief administrative officer affirming an access denial.
- 1345 (ii) An appeals board established by a political subdivision shall be composed of
1346 three members:
- 1347 (A) one of whom shall be an employee of the political subdivision; and
1348 (B) two of whom shall be members of the public who are not employed by or
1349 officials of a governmental entity, at least one of whom shall have professional
1350 experience with requesting or managing records.
- 1351 (iii) If a political subdivision establishes an appeals board, any appeal of a decision of
1352 a chief administrative officer shall be made to the appeals board.
- 1353 (iv) If a political subdivision does not establish an appeals board, the political
1354 subdivision's appeals process shall provide for an appeal of a chief administrative

- 1355 officer's decision to the [~~State Records Committee~~] director of the Government
1356 Records Office, as provided in Section 63G-2-403.
- 1357 (6)(a) A political subdivision or requester may appeal an appeals board decision:
1358 (i) to the [~~State Records Committee~~] director of the Government Records Office, as
1359 provided in Section 63G-2-403; or
1360 (ii) by filing a petition for judicial review with the district court.
- 1361 (b) The contents of a petition for judicial review under Subsection (6)(a)(ii) and the
1362 conduct of the proceeding shall be in accordance with Sections 63G-2-402 and
1363 63G-2-404.
- 1364 (c) A person who appeals an appeals board decision to the [~~State Records Committee~~]
1365 director of the Government Records Office does not lose or waive the right to seek
1366 judicial review of the decision of the [~~State Records Committee~~] director of the
1367 Government Records Office.
- 1368 (7) Any political subdivision that adopts an ordinance or policy under Subsection (1) shall
1369 forward to state archives a copy and summary description of the ordinance or policy.
- 1370 Section 19. Section **63G-2-702** is amended to read:
1371 **63G-2-702 . Applicability to the judiciary.**
- 1372 (1) The judiciary is subject to the provisions of this chapter except as provided in this
1373 section.
- 1374 (2)(a) The judiciary is not subject to:
1375 (i) Section 63G-2-209; or
1376 (ii) Part 4, Appeals, except as provided in Subsection (6).
- 1377 (b) The judiciary is not subject to [~~Part 5, State Records Committee, and~~] Title 63A,
1378 Chapter 12, Part 2, Government Records Office, or Part 6, Collection of Information
1379 and Accuracy of Records.
- 1380 (c) The judiciary is subject to only the following sections in Part 9, Public Associations:
1381 Sections 63A-12-105 and 63A-12-106.
- 1382 (3) The Judicial Council, the Administrative Office of the Courts, the courts, and other
1383 administrative units in the judicial branch shall designate and classify their records in
1384 accordance with Sections 63G-2-301 through 63G-2-305.
- 1385 (4) Substantially consistent with the provisions of this chapter, the Judicial Council shall:
1386 (a) make rules governing requests for access, fees, classification, designation,
1387 segregation, management, retention, denials and appeals of requests for access and
1388 retention, and amendment of judicial records;

1389 (b) establish an appellate board to handle appeals from denials of requests for access and
 1390 provide that a requester who is denied access by the appellate board may file a
 1391 lawsuit in district court; and

1392 (c) provide standards for the management and retention of judicial records substantially
 1393 consistent with Section 63A-12-103.

1394 (5) The Judicial Council may:

1395 (a) establish a process for an administrative unit of the judicial branch to petition for
 1396 relief from a person that the administrative unit claims is a vexatious requester; and

1397 (b) establish an appellate board to hear a petition for relief from a person that an
 1398 administrative unit of the judicial branch claims is a vexatious requester.

1399 (6) Rules governing appeals from denials of requests for access shall substantially comply
 1400 with the time limits provided in Section 63G-2-204 and Part 4, Appeals.

1401 (7) Upon request, the state archivist shall:

1402 (a) assist with and advise concerning the establishment of a records management
 1403 program in the judicial branch; and

1404 (b) as required by the judiciary, provide program services similar to those available to
 1405 the executive and legislative branches of government as provided in this chapter and
 1406 Title 63A, Chapter 12, Division of Archives and Records Service and Management
 1407 of Government Records.

1408 Section 20. Section **63G-2-703** is amended to read:

1409 **63G-2-703 . Applicability to the Legislature.**

1410 (1) The Legislature and its staff offices shall designate and classify records in accordance
 1411 with Sections 63G-2-301 through 63G-2-305 as public, private, controlled, or protected.

1412 (2)(a) The Legislature and its staff offices are not subject to:

1413 (i) Section 63G-2-203 or 63G-2-209; or

1414 (ii) Part 4, Appeals, [~~Part 5, State Records Committee~~] Title 63A, Chapter 12, Part 2,
 1415 Government Records Office, or Part 6, Collection of Information and Accuracy of
 1416 Records.

1417 (b) The Legislature is subject to only the following sections in Title 63A, Chapter 12,
 1418 Division of Archives and Records Service and Management of Government Records:[
 1419 Sections-]

1420 (i) Section 63A-12-102[-] ;

1421 (ii) Section 63A-12-102.5[-] ; and[-]

1422 (iii) Section 63A-12-106.

- 1423 (3) The Legislature, through the Legislative Management Committee:
- 1424 (a)(i) shall establish policies to handle requests for classification, designation, fees,
- 1425 access, denials, segregation, appeals, management, retention, and amendment of
- 1426 records; and
- 1427 (ii) may establish an appellate board to hear appeals from denials of access; and
- 1428 (b) may establish:
- 1429 (i) a process for determining that a person is a vexatious requester, including a
- 1430 process for an appeal from a determination that a person is a vexatious requester;
- 1431 and
- 1432 (ii) appropriate limitations on a person determined to be a vexatious requester.
- 1433 (4) Policies shall include reasonable times for responding to access requests consistent with
- 1434 the provisions of Part 2, Access to Records, fees, and reasonable time limits for appeals.
- 1435 (5) Upon request, the state archivist shall:
- 1436 (a) assist with and advise concerning the establishment of a records management
- 1437 program in the Legislature; and
- 1438 (b) as required by the Legislature, provide program services similar to those available to
- 1439 the executive branch of government, as provided in this chapter and Title 63A,
- 1440 Chapter 12, Division of Archives and Records Service and Management of
- 1441 Government Records.
- 1442 Section 21. Section **63G-2-801** is amended to read:
- 1443 **63G-2-801 . Criminal penalties.**
- 1444 (1)(a) A public employee or other person who has lawful access to any private,
- 1445 controlled, or protected record under this chapter, and who intentionally discloses,
- 1446 provides a copy of, or improperly uses a private, controlled, or protected record
- 1447 knowing that the disclosure or use is prohibited under this chapter, is, except as
- 1448 provided in Subsection 53-5-708(1)(c), guilty of a class B misdemeanor.
- 1449 (b) It is a defense to prosecution under Subsection (1)(a) that the actor used or released
- 1450 private, controlled, or protected information in the reasonable belief that the use or
- 1451 disclosure of the information was necessary to expose a violation of law involving
- 1452 government corruption, abuse of office, or misappropriation of public funds or
- 1453 property.
- 1454 (c) It is a defense to prosecution under Subsection (1)(a) that the record could have
- 1455 lawfully been released to the recipient if it had been properly classified.
- 1456 (d) It is a defense to prosecution under Subsection (1)(a) that the public employee or

1457 other person disclosed, provided, or used the record based on a good faith belief that
 1458 the disclosure, provision, or use was in accordance with the law.

1459 (2)(a) A person who by false pretenses, bribery, or theft, gains access to or obtains a
 1460 copy of any private, controlled, or protected record to which the person is not legally
 1461 entitled is guilty of a class B misdemeanor.

1462 (b) No person shall be guilty under Subsection (2)(a) who receives the record,
 1463 information, or copy after the fact and without prior knowledge of or participation in
 1464 the false pretenses, bribery, or theft.

1465 (3)(a) A public employee who intentionally refuses to release a record, the disclosure of
 1466 which the employee knows is required by law, is guilty of a class B misdemeanor.

1467 (b) It is a defense to prosecution under Subsection (3)(a) that the public employee's
 1468 failure to release the record was based on a good faith belief that the public employee
 1469 was acting in accordance with the requirements of law.

1470 (c) A public employee who intentionally refuses to release a record, the disclosure of
 1471 which the employee knows is required by a final unappealed order from a
 1472 government entity, the ~~[State Records Committee]~~ director of the Government
 1473 Records Office, or a court is guilty of a class B misdemeanor.

1474 Section 22. Section **63H-1-202** is amended to read:

1475 **63H-1-202 . Applicability of other law.**

1476 (1) As used in this section:

1477 (a) "Subsidiary" means an authority subsidiary that is a public body as defined in
 1478 Section 52-4-103.

1479 (b) "Subsidiary board" means the governing body of a subsidiary.

1480 (2) The authority or land within a project area is not subject to:

1481 (a) Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act;

1482 (b) Title 17, Chapter 27a, County Land Use, Development, and Management Act;

1483 (c) ordinances or regulations of a county or municipality, including those relating to land
 1484 use, health, business license, or franchise; or

1485 (d) the jurisdiction of a special district under Title 17B, Limited Purpose Local
 1486 Government Entities - Special Districts, or a special service district under Title 17D,
 1487 Chapter 1, Special Service District Act.

1488 (3) The authority is subject to and governed by Sections 63E-2-106, 63E-2-107, 63E-2-108,
 1489 63E-2-109, 63E-2-110, and 63E-2-111, but is not otherwise subject to or governed by
 1490 Title 63E, Independent Entities Code.

- 1491 (4)(a) The definitions in Section 57-8-3 apply to this Subsection (4).
- 1492 (b) Notwithstanding the provisions of Title 57, Chapter 8, Condominium Ownership Act,
1493 or any other provision of law:
- 1494 (i) if the military is the owner of land in a project area on which a condominium
1495 project is constructed, the military is not required to sign, execute, or record a
1496 declaration of a condominium project; and
- 1497 (ii) if a condominium unit in a project area is owned by the military or owned by the
1498 authority and leased to the military for \$1 or less per calendar year, not including
1499 any common charges that are reimbursements for actual expenses:
- 1500 (A) the condominium unit is not subject to any liens under Title 57, Chapter 8,
1501 Condominium Ownership Act;
- 1502 (B) condominium unit owners within the same building or commercial
1503 condominium project may agree on any method of allocation and payment of
1504 common area expenses, regardless of the size or par value of each unit; and
- 1505 (C) the condominium project may not be dissolved without the consent of all the
1506 condominium unit owners.
- 1507 (5) Notwithstanding any other provision, when a law requires the consent of a local
1508 government, the authority is the consenting entity for a project area.
- 1509 (6)(a) A department, division, or other agency of the state and a political subdivision of
1510 the state shall cooperate with the authority to the fullest extent possible to provide
1511 whatever support, information, or other assistance the authority requests that is
1512 reasonably necessary to help the authority fulfill the authority's duties and
1513 responsibilities under this chapter.
- 1514 (b) Subsection (6)(a) does not apply to a political subdivision that does not have any of a
1515 project area located within the boundary of the political subdivision.
- 1516 (7)(a) The authority and a subsidiary are subject to Title 52, Chapter 4, Open and Public
1517 Meetings Act, except that:
- 1518 (i) notwithstanding Section 52-4-104, the timing and nature of training to authority
1519 board members or subsidiary board members on the requirements of Title 52,
1520 Chapter 4, Open and Public Meetings Act, may be determined by:
- 1521 (A) the board chair, for the authority board; or
1522 (B) the subsidiary board chair, for a subsidiary board;
- 1523 (ii) authority staff may adopt a rule governing the use of electronic meetings under
1524 Section 52-4-207, if, under Subsection 63H-1-301(3), the board delegates to

- 1525 authority staff the power to adopt the rule; and
- 1526 (iii) for an electronic meeting of the authority board or subsidiary board that
- 1527 otherwise complies with Section 52-4-207, the authority board or subsidiary
- 1528 board, respectively:
- 1529 (A) is not required to establish an anchor location; and
- 1530 (B) may convene and conduct the meeting without the determination otherwise
- 1531 required under Subsection 52-4-207(5)(a)(i).
- 1532 (b) The authority and subsidiaries are not required to physically post notice
- 1533 notwithstanding any other provision of law.
- 1534 (8) The authority and a subsidiary are subject to Title 63G, Chapter 2, Government Records
- 1535 Access and Management Act, except that:
- 1536 (a) notwithstanding Section 63G-2-701:
- 1537 (i) the authority may establish an appeals board consisting of at least three members;
- 1538 (ii) an appeals board established under Subsection (8)(a)(i) shall include:
- 1539 (A) one of the authority board members appointed by the governor;
- 1540 (B) the authority board member appointed by the president of the Senate; and
- 1541 (C) the authority board member appointed by the speaker of the House of
- 1542 Representatives; and
- 1543 (iii) an appeal of a decision of an appeals board is to district court, as provided in
- 1544 Section 63G-2-404, except that the [~~State Records Committee is not a party~~]
- 1545 Government Records Office and the director of the Government Records Office
- 1546 are not parties; and
- 1547 (b) a record created or retained by the authority or a subsidiary acting in the role of a
- 1548 facilitator under Subsection 63H-1-201(3)(v) is a protected record under Title 63G,
- 1549 Chapter 2, Government Records Access and Management Act.
- 1550 (9) The authority or a subsidiary acting in the role of a facilitator under Subsection
- 1551 63H-1-201(3)(v) is not prohibited from receiving a benefit from a public-private
- 1552 partnership that results from the facilitator's work as a facilitator.
- 1553 (10)(a)(i) A subsidiary created as a public infrastructure district under Title 17D,
- 1554 Chapter 4, Public Infrastructure District Act, may, subject to limitations of Title
- 1555 17D, Chapter 4, Public Infrastructure District Act, levy a property tax for the
- 1556 operations and maintenance of the public infrastructure district's financed
- 1557 infrastructure and related improvements, subject to a maximum rate of .015.
- 1558 (ii) A levy under Subsection (10)(a)(i) may be separate from a public infrastructure

- 1559 district property tax levy for a bond.
- 1560 (b) If a subsidiary created as a public infrastructure district issues a bond:
- 1561 (i) the subsidiary may:
- 1562 (A) delay the effective date of the property tax levy for the bond until after the
- 1563 period of capitalized interest payments; and
- 1564 (B) covenant with bondholders not to reduce or impair the property tax levy; and
- 1565 (ii) notwithstanding a provision to the contrary in Title 17D, Chapter 4, Public
- 1566 Infrastructure District Act, the tax rate for the property tax levy for the bond may
- 1567 not exceed a rate that generates more revenue than required to pay the annual debt
- 1568 service of the bond plus administrative costs, subject to a maximum of .02.
- 1569 (c)(i) A subsidiary created as a public infrastructure district under Title 17D, Chapter
- 1570 4, Public Infrastructure District Act, may create tax areas, as defined in Section
- 1571 59-2-102, within the public infrastructure district and apply a different property
- 1572 tax rate to each tax area, subject to the maximum rate limitations described in
- 1573 Subsections (10)(a)(i) and (10)(b)(ii).
- 1574 (ii) If a subsidiary created by a public infrastructure district issues bonds, the
- 1575 subsidiary may issue bonds secured by property taxes from:
- 1576 (A) the entire public infrastructure district; or
- 1577 (B) one or more tax areas within the public infrastructure district.
- 1578 (11)(a) Terms defined in Section 57-11-2 apply to this Subsection (11).
- 1579 (b) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act, does not apply to an
- 1580 offer or disposition of an interest in land if the interest in land lies within the
- 1581 boundaries of the project area and the authority:
- 1582 (i)(A) has a development review committee using at least one professional planner;
- 1583 (B) enacts standards and guidelines that require approval of planning, land use,
- 1584 and plats, including the approval of plans for streets, culinary water, sanitary
- 1585 sewer, and flood control; and
- 1586 (C) will have the improvements described in Subsection (11)(b)(i)(B) plus
- 1587 telecommunications and electricity; and
- 1588 (ii) if at the time of the offer or disposition, the subdivider furnishes satisfactory
- 1589 assurance of completion of the improvements described in Subsection (11)(b)(i)(C).
- 1590 (12)(a) As used in this Subsection (12), "officer" means the same as an officer within the
- 1591 meaning of the Utah Constitution, Article IV, Section 10.
- 1592 (b) An official act of an officer may not be invalidated for the reason that the officer

1593 failed to take the oath of office.

1594 Section 23. Section **67-3-1** is amended to read:

1595 **67-3-1 . Functions and duties.**

1596 (1)(a) The state auditor is the auditor of public accounts and is independent of any
1597 executive or administrative officers of the state.

1598 (b) The state auditor is not limited in the selection of personnel or in the determination
1599 of the reasonable and necessary expenses of the state auditor's office.

1600 (2) The state auditor shall examine and certify annually in respect to each fiscal year,
1601 financial statements showing:

1602 (a) the condition of the state's finances;

1603 (b) the revenues received or accrued;

1604 (c) expenditures paid or accrued;

1605 (d) the amount of unexpended or unencumbered balances of the appropriations to the
1606 agencies, departments, divisions, commissions, and institutions; and

1607 (e) the cash balances of the funds in the custody of the state treasurer.

1608 (3)(a) The state auditor shall:

1609 (i) audit each permanent fund, each special fund, the General Fund, and the accounts
1610 of any department of state government or any independent agency or public
1611 corporation as the law requires, as the auditor determines is necessary, or upon
1612 request of the governor or the Legislature;

1613 (ii) perform the audits in accordance with generally accepted auditing standards and
1614 other auditing procedures as promulgated by recognized authoritative bodies; and

1615 (iii) as the auditor determines is necessary, conduct the audits to determine:

1616 (A) honesty and integrity in fiscal affairs;

1617 (B) accuracy and reliability of financial statements;

1618 (C) effectiveness and adequacy of financial controls; and

1619 (D) compliance with the law.

1620 (b) If any state entity receives federal funding, the state auditor shall ensure that the
1621 audit is performed in accordance with federal audit requirements.

1622 (c)(i) The costs of the federal compliance portion of the audit may be paid from an
1623 appropriation to the state auditor from the General Fund.

1624 (ii) If an appropriation is not provided, or if the federal government does not
1625 specifically provide for payment of audit costs, the costs of the federal compliance
1626 portions of the audit shall be allocated on the basis of the percentage that each

1627 state entity's federal funding bears to the total federal funds received by the state.

1628 (iii) The allocation shall be adjusted to reflect any reduced audit time required to

1629 audit funds passed through the state to local governments and to reflect any

1630 reduction in audit time obtained through the use of internal auditors working

1631 under the direction of the state auditor.

1632 (4)(a) Except as provided in Subsection (4)(b), the state auditor shall, in addition to

1633 financial audits, and as the auditor determines is necessary, conduct performance and

1634 special purpose audits, examinations, and reviews of any entity that receives public

1635 funds, including a determination of any or all of the following:

1636 (i) the honesty and integrity of all the entity's fiscal affairs;

1637 (ii) whether the entity's administrators have faithfully complied with legislative intent;

1638 (iii) whether the entity's operations have been conducted in an efficient, effective, and

1639 cost-efficient manner;

1640 (iv) whether the entity's programs have been effective in accomplishing the intended

1641 objectives; and

1642 (v) whether the entity's management, control, and information systems are adequate,

1643 effective, and secure.

1644 (b) The auditor may not conduct performance and special purpose audits, examinations,

1645 and reviews of any entity that receives public funds if the entity:

1646 (i) has an elected auditor; and

1647 (ii) has, within the entity's last budget year, had the entity's financial statements or

1648 performance formally reviewed by another outside auditor.

1649 (5) The state auditor:

1650 (a) shall administer any oath or affirmation necessary to the performance of the duties of

1651 the auditor's office; and

1652 (b) may:

1653 (i) subpoena witnesses and documents, whether electronic or otherwise; and

1654 (ii) examine into any matter that the auditor considers necessary.

1655 (6) The state auditor may require all persons who have had the disposition or management

1656 of any property of this state or its political subdivisions to submit statements regarding

1657 the property at the time and in the form that the auditor requires.

1658 (7) The state auditor shall:

1659 (a) except where otherwise provided by law, institute suits in Salt Lake County in

1660 relation to the assessment, collection, and payment of revenues against:

- 1661 (i) persons who by any means have become entrusted with public money or property
1662 and have failed to pay over or deliver the money or property; and
1663 (ii) all debtors of the state;
- 1664 (b) collect and pay into the state treasury all fees received by the state auditor;
- 1665 (c) perform the duties of a member of all boards of which the state auditor is a member
1666 by the constitution or laws of the state, and any other duties that are prescribed by the
1667 constitution and by law;
- 1668 (d) stop the payment of the salary of any state official or state employee who:
1669 (i) refuses to settle accounts or provide required statements about the custody and
1670 disposition of public funds or other state property;
1671 (ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling
1672 board or department head with respect to the manner of keeping prescribed
1673 accounts or funds; or
1674 (iii) fails to correct any delinquencies, improper procedures, and errors brought to the
1675 official's or employee's attention;
- 1676 (e) establish accounting systems, methods, and forms for public accounts in all taxing or
1677 fee-assessing units of the state in the interest of uniformity, efficiency, and economy;
- 1678 (f) superintend the contractual auditing of all state accounts;
- 1679 (g) subject to Subsection (8)(a), withhold state allocated funds or the disbursement of
1680 property taxes from a state or local taxing or fee-assessing unit, if necessary, to
1681 ensure that officials and employees in those taxing units comply with state laws and
1682 procedures in the budgeting, expenditures, and financial reporting of public funds;
- 1683 (h) subject to Subsection (9), withhold the disbursement of tax money from any county,
1684 if necessary, to ensure that officials and employees in the county comply with
1685 Section 59-2-303.1; and
- 1686 (i) withhold state allocated funds or the disbursement of property taxes from a local
1687 government entity or a limited purpose entity, as those terms are defined in Section
1688 67-1a-15 if the state auditor finds the withholding necessary to ensure that the entity
1689 registers and maintains the entity's registration with the lieutenant governor, in
1690 accordance with Section 67-1a-15.
- 1691 (8)(a) Except as otherwise provided by law, the state auditor may not withhold funds
1692 under Subsection (7)(g) until a state or local taxing or fee-assessing unit has received
1693 formal written notice of noncompliance from the auditor and has been given 60 days
1694 to make the specified corrections.

- 1695 (b) If, after receiving notice under Subsection (8)(a), a state or independent local
1696 fee-assessing unit that exclusively assesses fees has not made corrections to comply
1697 with state laws and procedures in the budgeting, expenditures, and financial reporting
1698 of public funds, the state auditor:
- 1699 (i) shall provide a recommended timeline for corrective actions;
- 1700 (ii) may prohibit the state or local fee-assessing unit from accessing money held by
1701 the state; and
- 1702 (iii) may prohibit a state or local fee-assessing unit from accessing money held in an
1703 account of a financial institution by filing an action in a court with jurisdiction
1704 under Title 78A, Judiciary and Judicial Administration, requesting an order of the
1705 court to prohibit a financial institution from providing the fee-assessing unit
1706 access to an account.
- 1707 (c) The state auditor shall remove a limitation on accessing funds under Subsection (8)(b)
1708 upon compliance with state laws and procedures in the budgeting, expenditures, and
1709 financial reporting of public funds.
- 1710 (d) If a local taxing or fee-assessing unit has not adopted a budget in compliance with
1711 state law, the state auditor:
- 1712 (i) shall provide notice to the taxing or fee-assessing unit of the unit's failure to
1713 comply;
- 1714 (ii) may prohibit the taxing or fee-assessing unit from accessing money held by the
1715 state; and
- 1716 (iii) may prohibit a taxing or fee-assessing unit from accessing money held in an
1717 account of a financial institution by:
- 1718 (A) contacting the taxing or fee-assessing unit's financial institution and
1719 requesting that the institution prohibit access to the account; or
- 1720 (B) filing an action in a court with jurisdiction under Title 78A, Judiciary and
1721 Judicial Administration, requesting an order of the court to prohibit a financial
1722 institution from providing the taxing or fee-assessing unit access to an account.
- 1723 (e) If the local taxing or fee-assessing unit adopts a budget in compliance with state law,
1724 the state auditor shall eliminate a limitation on accessing funds described in
1725 Subsection (8)(d).
- 1726 (9) The state auditor may not withhold funds under Subsection (7)(h) until a county has
1727 received formal written notice of noncompliance from the auditor and has been given 60
1728 days to make the specified corrections.

- 1729 (10)(a) The state auditor may not withhold funds under Subsection (7)(i) until the state
1730 auditor receives a notice of non-registration, as that term is defined in Section
1731 67-1a-15.
- 1732 (b) If the state auditor receives a notice of non-registration, the state auditor may
1733 prohibit the local government entity or limited purpose entity, as those terms are
1734 defined in Section 67-1a-15, from accessing:
- 1735 (i) money held by the state; and
1736 (ii) money held in an account of a financial institution by:
- 1737 (A) contacting the entity's financial institution and requesting that the institution
1738 prohibit access to the account; or
1739 (B) filing an action in a court with jurisdiction under Title 78A, Judiciary and
1740 Judicial Administration, requesting an order of the court to prohibit a financial
1741 institution from providing the entity access to an account.
- 1742 (c) The state auditor shall remove the prohibition on accessing funds described in
1743 Subsection (10)(b) if the state auditor received a notice of registration, as that term is
1744 defined in Section 67-1a-15, from the lieutenant governor.
- 1745 (11) Notwithstanding Subsection (7)(g), (7)(h), (7)(i), (8)(b), (8)(d), or (10)(b), the state
1746 auditor:
- 1747 (a) shall authorize a disbursement by a local government entity or limited purpose entity,
1748 as those terms are defined in Section 67-1a-15, or a state or local taxing or
1749 fee-assessing unit if the disbursement is necessary to:
- 1750 (i) avoid a major disruption in the operations of the local government entity, limited
1751 purpose entity, or state or local taxing or fee-assessing unit; or
1752 (ii) meet debt service obligations; and
- 1753 (b) may authorize a disbursement by a local government entity, limited purpose entity,
1754 or state or local taxing or fee-assessing unit as the state auditor determines is
1755 appropriate.
- 1756 (12)(a) The state auditor may seek relief under the Utah Rules of Civil Procedure to take
1757 temporary custody of public funds if an action is necessary to protect public funds
1758 from being improperly diverted from their intended public purpose.
- 1759 (b) If the state auditor seeks relief under Subsection (12)(a):
- 1760 (i) the state auditor is not required to exhaust the procedures in Subsection (7) or (8);
1761 and
1762 (ii) the state treasurer may hold the public funds in accordance with Section 67-4-1 if

1763 a court orders the public funds to be protected from improper diversion from their
1764 public purpose.

1765 (13) The state auditor shall:

1766 (a) establish audit guidelines and procedures for audits of local mental health and
1767 substance abuse authorities and their contract providers, conducted pursuant to Title
1768 17, Chapter 43, Part 2, Local Substance Abuse Authorities, Title 17, Chapter 43, Part
1769 3, Local Mental Health Authorities, Title 26B, Chapter 5, Health Care - Substance
1770 Use and Mental Health, and Title 51, Chapter 2a, Accounting Reports from Political
1771 Subdivisions, Interlocal Organizations, and Other Local Entities Act; and

1772 (b) ensure that those guidelines and procedures provide assurances to the state that:

1773 (i) state and federal funds appropriated to local mental health authorities are used for
1774 mental health purposes;

1775 (ii) a private provider under an annual or otherwise ongoing contract to provide
1776 comprehensive mental health programs or services for a local mental health
1777 authority is in compliance with state and local contract requirements and state and
1778 federal law;

1779 (iii) state and federal funds appropriated to local substance abuse authorities are used
1780 for substance abuse programs and services; and

1781 (iv) a private provider under an annual or otherwise ongoing contract to provide
1782 comprehensive substance abuse programs or services for a local substance abuse
1783 authority is in compliance with state and local contract requirements, and state and
1784 federal law.

1785 (14)(a) The state auditor may, in accordance with the auditor's responsibilities for
1786 political subdivisions of the state as provided in Title 51, Chapter 2a, Accounting
1787 Reports from Political Subdivisions, Interlocal Organizations, and Other Local
1788 Entities Act, initiate audits or investigations of any political subdivision that are
1789 necessary to determine honesty and integrity in fiscal affairs, accuracy and reliability
1790 of financial statements, effectiveness, and adequacy of financial controls and
1791 compliance with the law.

1792 (b) If the state auditor receives notice under Subsection 11-41-104(7) from the
1793 Governor's Office of Economic Opportunity on or after July 1, 2024, the state auditor
1794 may initiate an audit or investigation of the public entity subject to the notice to
1795 determine compliance with Section 11-41-103.

1796 (15)(a) The state auditor may not audit work that the state auditor performed before

- 1797 becoming state auditor.
- 1798 (b) If the state auditor has previously been a responsible official in state government
1799 whose work has not yet been audited, the Legislature shall:
- 1800 (i) designate how that work shall be audited; and
1801 (ii) provide additional funding for those audits, if necessary.
- 1802 (16) The state auditor shall:
- 1803 (a) with the assistance, advice, and recommendations of an advisory committee
1804 appointed by the state auditor from among special district boards of trustees, officers,
1805 and employees and special service district boards, officers, and employees:
- 1806 (i) prepare a Uniform Accounting Manual for Special Districts that:
- 1807 (A) prescribes a uniform system of accounting and uniform budgeting and
1808 reporting procedures for special districts under Title 17B, Limited Purpose
1809 Local Government Entities - Special Districts, and special service districts
1810 under Title 17D, Chapter 1, Special Service District Act;
- 1811 (B) conforms with generally accepted accounting principles; and
1812 (C) prescribes reasonable exceptions and modifications for smaller districts to the
1813 uniform system of accounting, budgeting, and reporting;
- 1814 (ii) maintain the manual under this Subsection (16)(a) so that the manual continues to
1815 reflect generally accepted accounting principles;
- 1816 (iii) conduct a continuing review and modification of procedures in order to improve
1817 them;
- 1818 (iv) prepare and supply each district with suitable budget and reporting forms; and
1819 (v)(A) prepare instructional materials, conduct training programs, and render other
1820 services considered necessary to assist special districts and special service
1821 districts in implementing the uniform accounting, budgeting, and reporting
1822 procedures; and
1823 (B) ensure that any training described in Subsection (16)(a)(v)(A) complies with
1824 Title 63G, Chapter 22, State Training and Certification Requirements; and
- 1825 (b) continually analyze and evaluate the accounting, budgeting, and reporting practices
1826 and experiences of specific special districts and special service districts selected by
1827 the state auditor and make the information available to all districts.
- 1828 (17)(a) The following records in the custody or control of the state auditor are protected
1829 records under Title 63G, Chapter 2, Government Records Access and Management
1830 Act:

- 1831 (i) records that would disclose information relating to allegations of personal
1832 misconduct, gross mismanagement, or illegal activity of a past or present
1833 governmental employee if the information or allegation cannot be corroborated by
1834 the state auditor through other documents or evidence, and the records relating to
1835 the allegation are not relied upon by the state auditor in preparing a final audit
1836 report;
- 1837 (ii) records and audit workpapers to the extent the workpapers would disclose the
1838 identity of an individual who during the course of an audit, communicated the
1839 existence of any waste of public funds, property, or manpower, or a violation or
1840 suspected violation of a law, rule, or regulation adopted under the laws of this
1841 state, a political subdivision of the state, or any recognized entity of the United
1842 States, if the information was disclosed on the condition that the identity of the
1843 individual be protected;
- 1844 (iii) before an audit is completed and the final audit report is released, records or
1845 drafts circulated to an individual who is not an employee or head of a
1846 governmental entity for the individual's response or information;
- 1847 (iv) records that would disclose an outline or part of any audit survey plans or audit
1848 program; and
- 1849 (v) requests for audits, if disclosure would risk circumvention of an audit.
- 1850 (b) The provisions of Subsections (17)(a)(i), (ii), and (iii) do not prohibit the disclosure
1851 of records or information that relate to a violation of the law by a governmental entity
1852 or employee to a government prosecutor or peace officer.
- 1853 (c) The provisions of this Subsection (17) do not limit the authority otherwise given to
1854 the state auditor to classify a document as public, private, controlled, or protected
1855 under Title 63G, Chapter 2, Government Records Access and Management Act.
- 1856 (d)(i) As used in this Subsection (17)(d), "record dispute" means a dispute between
1857 the state auditor and the subject of an audit performed by the state auditor as to
1858 whether the state auditor may release a record, as defined in Section 63G-2-103,
1859 to the public that the state auditor gained access to in the course of the state
1860 auditor's audit but which the subject of the audit claims is not subject to disclosure
1861 under Title 63G, Chapter 2, Government Records Access and Management Act.
- 1862 (ii) The state auditor may submit a record dispute to the [~~State Records Committee,~~
1863 ~~created in Section 63G-2-501]~~ director of the Government Records Office, created
1864 in Section 63A-12-202, for a determination of whether the state auditor may, in

- 1865 conjunction with the state auditor's release of an audit report, release to the public
1866 the record that is the subject of the record dispute.
- 1867 (iii) The state auditor or the subject of the audit may seek judicial review of [~~a State~~
1868 ~~Records Committee~~] the director's determination[~~under~~] , described in Subsection
1869 (17)(d)(ii), as provided in Section 63G-2-404.
- 1870 (18) If the state auditor conducts an audit of an entity that the state auditor has previously
1871 audited and finds that the entity has not implemented a recommendation made by the
1872 state auditor in a previous audit, the state auditor shall notify the Legislative
1873 Management Committee through the Legislative Management Committee's audit
1874 subcommittee that the entity has not implemented that recommendation.
- 1875 (19) The state auditor shall, with the advice and consent of the Senate, appoint the state
1876 privacy officer described in Section 67-3-13.
- 1877 (20) Except as provided in Subsection (21), the state auditor shall report, or ensure that
1878 another government entity reports, on the financial, operational, and performance
1879 metrics for the state system of higher education and the state system of public education,
1880 including metrics in relation to students, programs, and schools within those systems.
- 1881 (21)(a) Notwithstanding Subsection (20), the state auditor shall conduct regular audits of:
1882 (i) the scholarship granting organization for the Carson Smith Opportunity
1883 Scholarship Program, created in Section 53E-7-402;
1884 (ii) the State Board of Education for the Carson Smith Scholarship Program, created
1885 in Section 53F-4-302; and
1886 (iii) the scholarship program manager for the Utah Fits All Scholarship Program,
1887 created in Section 53F-6-402, including an analysis of the cost effectiveness of the
1888 program, taking into consideration the amount of the scholarship and the amount
1889 of state and local funds dedicated on a per-student basis within the traditional
1890 public education system.
- 1891 (b) Nothing in this subsection limits or impairs the authority of the State Board of
1892 Education to administer the programs described in Subsection (21)(a).
- 1893 (22) The state auditor shall, based on the information posted by the Office of Legislative
1894 Research and General Counsel under Subsection 36-12-12.1(2), for each policy, track
1895 and post the following information on the state auditor's website:
1896 (a) the information posted under Subsections 36-12-12.1(2)(a) through (e);
1897 (b) an indication regarding whether the policy is timely adopted, adopted late, or not
1898 adopted;

- 1899 (c) an indication regarding whether the policy complies with the requirements
 1900 established by law for the policy; and
 1901 (d) a link to the policy.
- 1902 (23)(a) A legislator may request that the state auditor conduct an inquiry to determine
 1903 whether a government entity, government official, or government employee has
 1904 complied with a legal obligation directly imposed, by statute, on the government
 1905 entity, government official, or government employee.
- 1906 (b) The state auditor may, upon receiving a request under Subsection (23)(a), conduct
 1907 the inquiry requested.
- 1908 (c) If the state auditor conducts the inquiry described in Subsection (23)(b), the state
 1909 auditor shall post the results of the inquiry on the state auditor's website.
- 1910 (d) The state auditor may limit the inquiry described in this Subsection (23) to a simple
 1911 determination, without conducting an audit, regarding whether the obligation was
 1912 fulfilled.
- 1913 (24) The state auditor shall:
- 1914 (a) ensure compliance with Title 63G, Chapter 31, Distinctions on the Basis of Sex, in
 1915 accordance with Section 63G-31-401; and
 1916 (b) report to the Legislative Management Committee, upon request, regarding the state
 1917 auditor's actions under this Subsection (24).
- 1918 (25) The state auditor shall report compliance with Sections 67-27-107, 67-27-108, and
 1919 67-27-109 by:
- 1920 (a) establishing a process to receive and audit each alleged violation; and
 1921 (b) reporting to the Legislative Management Committee, upon request, regarding the
 1922 state auditor's findings and recommendations under this Subsection (25).
- 1923 Section 24. Section **77-18-103** is amended to read:
- 1924 **77-18-103 . Presentence investigation report -- Classification of presentence**
 1925 **investigation report -- Evidence or other information at sentencing.**
- 1926 (1) Before the imposition of a sentence, the court may:
- 1927 (a) upon agreement of the defendant, continue the date for the imposition of the sentence
 1928 for a reasonable period of time for the purpose of obtaining a presentence
 1929 investigation report from the department or a law enforcement agency, or information
 1930 from any other source about the defendant; and
 1931 (b) if the defendant is convicted of a felony or a class A misdemeanor, request that the
 1932 department or a law enforcement agency prepare a presentence investigation report

1933 for the defendant.

1934 (2)(a) Notwithstanding Subsection (1), if a defendant is convicted of a felony offense
1935 and the defendant is a habitual offender, the prosecuting attorney shall notify the
1936 court that the defendant is a habitual offender.

1937 (b) Upon a notification under Subsection (2)(a), the court may not impose a sentence for
1938 the conviction without ordering and obtaining a presentence investigation report,
1939 unless the court finds good cause to proceed with sentencing without the presentence
1940 investigation report.

1941 (3) If a presentence investigation report is required under Subsection (2) or the standards
1942 established by the department described in Section 77-18-109, the presentence
1943 investigation report under Subsection (1) shall include:

1944 (a) any impact statement provided by a victim as described in Subsection 77-38b-203

1945 (3)(c);

1946 (b) information on restitution as described in Subsections 77-38b-203(3)(a) and (b);

1947 (c) recommendations for treatment for the defendant; and

1948 (d) the number of days since the commission of the offense that the defendant has spent
1949 in the custody of the jail and the number of days, if any, the defendant was released
1950 to a supervised release program or an alternative incarceration program under Section
1951 17-22-5.5.

1952 (4) The department or law enforcement agency shall provide the presentence investigation
1953 report to the defendant's attorney, or the defendant if the defendant is not represented by
1954 counsel, the prosecuting attorney, and the court for review within three working days
1955 before the day on which the defendant is sentenced.

1956 (5)(a)(i) If there is an alleged inaccuracy in the presentence investigation report that
1957 is not resolved by the parties and the department or law enforcement agency
1958 before sentencing:

1959 (A) the alleged inaccuracy shall be brought to the attention of the court at
1960 sentencing; and

1961 (B) the court may grant an additional 10 working days after the day on which the
1962 alleged inaccuracy is brought to the court's attention to allow the parties and
1963 the department to resolve the alleged inaccuracy in the presentence
1964 investigation report.

1965 (ii) If the court does not grant additional time under Subsection (5)(a)(i)(B), or the
1966 alleged inaccuracy cannot be resolved after 10 working days, and if the court finds

- 1967 that there is an inaccuracy in the presentence investigation report, the court shall:
- 1968 (A) enter a written finding as to the relevance and accuracy of the challenged
- 1969 portion of the presentence investigation report; and
- 1970 (B) provide the written finding to the department or the law enforcement agency.
- 1971 (b) The department shall attach the written finding to the presentence investigation
- 1972 report as an addendum.
- 1973 (c) If a party fails to challenge the accuracy of the presentence investigation report at the
- 1974 time of sentencing, the matter shall be considered waived.
- 1975 (6) The contents of the presentence investigation report are protected and not available
- 1976 except by court order for purposes of sentencing as provided by rule of the Judicial
- 1977 Council or for use by the department or law enforcement agency.
- 1978 (7)(a) A presentence investigation report is classified as protected in accordance with
- 1979 Title 63G, Chapter 2, Government Records Access and Management Act.
- 1980 (b) Notwithstanding Sections 63G-2-403 and 63G-2-404, the [~~State Records Committee~~]
- 1981 director of the State Records Office, created in Section 63A-12-202, may not order
- 1982 the disclosure of a presentence investigation report.
- 1983 (8) Except for disclosure at the time of sentencing in accordance with this section, the
- 1984 department or law enforcement agency may disclose a presentence investigation only
- 1985 when:
- 1986 (a) ordered by the court in accordance with Subsection 63G-2-202(7);
- 1987 (b) requested by a law enforcement agency or other agency approved by the department
- 1988 for purposes of supervision, confinement, and treatment of a defendant;
- 1989 (c) requested by the board;
- 1990 (d) requested by the subject of the presentence investigation report or the subject's
- 1991 authorized representative;
- 1992 (e) requested by the victim of the offense discussed in the presentence investigation
- 1993 report, or the victim's authorized representative, if the disclosure is only information
- 1994 relating to:
- 1995 (i) statements or materials provided by the victim;
- 1996 (ii) the circumstances of the offense, including statements by the defendant; or
- 1997 (iii) the impact of the offense on the victim or the victim's household; or
- 1998 (f) requested by a sex offender treatment provider:
- 1999 (i) who is certified to provide treatment under the certification program established in
- 2000 Subsection 64-13-25(2);

- 2001 (ii) who is providing, at the time of the request, sex offender treatment to the offender
2002 who is the subject of the presentence investigation report; and
- 2003 (iii) who provides written assurance to the department that the report:
2004 (A) is necessary for the treatment of the defendant;
2005 (B) will be used solely for the treatment of the defendant; and
2006 (C) will not be disclosed to an individual or entity other than the defendant.
- 2007 (9)(a) At the time of sentence, the court shall receive any testimony, evidence, or
2008 information that the defendant or the prosecuting attorney desires to present
2009 concerning the appropriate sentence.
- 2010 (b) Testimony, evidence, or information under Subsection (9)(a) shall be presented in
2011 open court on record and in the presence of the defendant.
- 2012 (10) The court may not rely solely on an algorithm or a risk assessment tool score in
2013 determining the appropriate sentence for a defendant.
- 2014 Section 25. Section **77-27-5** is amended to read:
2015 **77-27-5 . Board of Pardons and Parole authority.**
- 2016 (1)(a) Subject to this chapter and other laws of the state, and except for a conviction for
2017 treason or impeachment, the board shall determine by majority decision when and
2018 under what conditions an offender's conviction may be pardoned or commuted.
- 2019 (b) The board shall determine by majority decision when and under what conditions an
2020 offender committed to serve a sentence at a penal or correctional facility, which is
2021 under the jurisdiction of the department, may:
2022 (i) be released upon parole;
2023 (ii) have a fine or forfeiture remitted;
2024 (iii) have the offender's criminal accounts receivable remitted in accordance with
2025 Section 77-32b-105 or 77-32b-106;
2026 (iv) have the offender's payment schedule modified in accordance with Section
2027 77-32b-103; or
2028 (v) have the offender's sentence terminated.
- 2029 (c) The board shall prioritize public safety when making a determination under
2030 Subsection (1)(a) or (1)(b).
- 2031 (d)(i) The board may sit together or in panels to conduct hearings.
2032 (ii) The chair shall appoint members to the panels in any combination and in
2033 accordance with rules made by the board in accordance with Title 63G, Chapter 3,
2034 Utah Administrative Rulemaking Act.

- 2035 (iii) The chair may participate on any panel and when doing so is chair of the panel.
- 2036 (iv) The chair of the board may designate the chair for any other panel.
- 2037 (e)(i) Except after a hearing before the board, or the board's appointed examiner, in
- 2038 an open session, the board may not:
- 2039 (A) remit a fine or forfeiture for an offender or the offender's criminal accounts
- 2040 receivable;
- 2041 (B) release the offender on parole; or
- 2042 (C) commute, pardon, or terminate an offender's sentence.
- 2043 (ii) An action taken under this Subsection (1) other than by a majority of the board
- 2044 shall be affirmed by a majority of the board.
- 2045 (f) A commutation or pardon may be granted only after a full hearing before the board.
- 2046 (2)(a) In the case of a hearing, timely prior notice of the time and location of the hearing
- 2047 shall be given to the offender.
- 2048 (b) The county or district attorney's office responsible for prosecution of the case, the
- 2049 sentencing court, and law enforcement officials responsible for the defendant's arrest
- 2050 and conviction shall be notified of any board hearings through the board's website.
- 2051 (c) Whenever possible, the victim or the victim's representative, if designated, shall be
- 2052 notified of original hearings and any hearing after that if notification is requested and
- 2053 current contact information has been provided to the board.
- 2054 (d)(i) Notice to the victim or the victim's representative shall include information
- 2055 provided in Section 77-27-9.5, and any related rules made by the board under that
- 2056 section.
- 2057 (ii) The information under Subsection (2)(d)(i) shall be provided in terms that are
- 2058 reasonable for the lay person to understand.
- 2059 (3)(a) A decision by the board is final and not subject for judicial review if the decision
- 2060 is regarding:
- 2061 (i) a pardon, parole, commutation, or termination of an offender's sentence;
- 2062 (ii) the modification of an offender's payment schedule for restitution; or
- 2063 (iii) the remission of an offender's criminal accounts receivable or a fine or forfeiture.
- 2064 (b) Deliberative processes are not public and the board is exempt from Title 52, Chapter
- 2065 4, Open and Public Meetings Act, when the board is engaged in the board's
- 2066 deliberative process.
- 2067 (c) Pursuant to Subsection [~~63G-2-103(25)(b)(xi)~~] 63G-2-103(26)(b)(xii), records of the
- 2068 deliberative process are exempt from Title 63G, Chapter 2, Government Records

- 2069 Access and Management Act.
- 2070 (d) Unless it will interfere with a constitutional right, deliberative processes are not
2071 subject to disclosure, including discovery.
- 2072 (e) Nothing in this section prevents the obtaining or enforcement of a civil judgment.
- 2073 (4)(a) This chapter may not be construed as a denial of or limitation of the governor's
2074 power to grant respite or reprieves in all cases of convictions for offenses against the
2075 state, except treason or conviction on impeachment.
- 2076 (b) Notwithstanding Subsection (4)(a), respites or reprieves may not extend beyond the
2077 next session of the board.
- 2078 (c) At the next session of the board, the board:
- 2079 (i) shall continue or terminate the respite or reprieve; or
2080 (ii) may commute the punishment or pardon the offense as provided.
- 2081 (d) In the case of conviction for treason, the governor may suspend execution of the
2082 sentence until the case is reported to the Legislature at the Legislature's next session.
- 2083 (e) The Legislature shall pardon or commute the sentence or direct the sentence's
2084 execution.
- 2085 (5)(a) In determining when, where, and under what conditions an offender serving a
2086 sentence may be paroled or pardoned, have a fine or forfeiture remitted, have the
2087 offender's criminal accounts receivable remitted, or have the offender's sentence
2088 commuted or terminated, the board shall:
- 2089 (i) consider whether the offender has made restitution ordered by the court under
2090 Section 77-38b-205, or is prepared to pay restitution as a condition of any parole,
2091 pardon, remission of a criminal accounts receivable or a fine or forfeiture, or a
2092 commutation or termination of the offender's sentence;
- 2093 (ii) except as provided in Subsection (5)(b), develop and use a list of criteria for
2094 making determinations under this Subsection (5);
- 2095 (iii) consider information provided by the department regarding an offender's
2096 individual case action plan; and
- 2097 (iv) review an offender's status within 60 days after the day on which the board
2098 receives notice from the department that the offender has completed all of the
2099 offender's case action plan components that relate to activities that can be
2100 accomplished while the offender is imprisoned.
- 2101 (b) The board shall determine whether to remit an offender's criminal accounts
2102 receivable under this Subsection (5) in accordance with Section 77-32b-105 or

- 2103 77-32b-106.
- 2104 (6) In determining whether parole may be terminated, the board shall consider:
- 2105 (a) the offense committed by the parolee; and
- 2106 (b) the parole period under Section 76-3-202, and in accordance with Section 77-27-13.
- 2107 (7) For an offender placed on parole after December 31, 2018, the board shall terminate
- 2108 parole in accordance with the adult sentencing and supervision length guidelines, as
- 2109 defined in Section 63M-7-401.1, to the extent the guidelines are consistent with the
- 2110 requirements of the law.
- 2111 (8) The board may not rely solely on an algorithm or a risk assessment tool score in
- 2112 determining whether parole should be granted or terminated for an offender.
- 2113 (9) The board may intervene as a limited-purpose party in a judicial or administrative
- 2114 proceeding, including a criminal action, to seek:
- 2115 (a) correction of an order that has or will impact the board's jurisdiction; or
- 2116 (b) clarification regarding an order that may impact the board's jurisdiction.
- 2117 (10) A motion to intervene brought under Subsection (8)(a) shall be raised within 60 days
- 2118 after the day on which a court enters the order that impacts the board's jurisdiction.
- 2119 Section 26. **Repealer.**
- 2120 This bill repeals:
- 2121 Section **63G-2-101, Title.**
- 2122 Section **63G-2-501, State Records Committee created -- Membership -- Terms --**
- 2123 **Vacancies -- Expenses.**
- 2124 Section **63G-2-502, State Records Committee -- Duties.**
- 2125 Section 27. **Effective Date.**
- 2126 This bill takes effect on May 7, 2025.