

Todd Weiler proposes the following substitute bill:

Prosecutorial Misconduct Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Karianne Lisonbee

LONG TITLE

General Description:

This bill creates a commission to address prosecutorial misconduct.

Highlighted Provisions:

This bill:

- defines terms;
- provides that certain records of the Prosecutor Conduct Commission are protected;
- creates an independent commission called the Prosecutor Conduct Commission (commission);
- provides the membership of the commission;
- addresses terms, vacancies, and compensation for members of the commission;
- allows the commission to select a chair and vice chair for a two-year term;
- addresses staff and expenses for the commission;
- addresses the duties and functions of the commission;
- addresses the complaint and investigation process for the commission;
- allows an employer to inquire as to whether there is a pending investigation regarding a prosecuting attorney;
- provides the requirements for a finding of professional misconduct by a prosecuting attorney;
- provides reporting requirements when the commission makes a finding of professional misconduct;
- enacts an annual reporting requirement to the Legislature regarding complaints and investigations by the commission; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63G-2-305, as last amended by Laws of Utah 2024, Chapters 18, 101, 135, 267, 344, and 522

ENACTS:

78A-9-201, Utah Code Annotated 1953

78A-9-202, Utah Code Annotated 1953

78A-9-203, Utah Code Annotated 1953

78A-9-204, Utah Code Annotated 1953

78A-9-205, Utah Code Annotated 1953

78A-9-206, Utah Code Annotated 1953

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

Section 1. Section **63G-2-305** is amended to read:

63G-2-305 . Protected records.

The following records are protected if properly classified by a governmental entity:

- (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;
- (2) commercial information or nonindividual financial information obtained from a person if:
 - (a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;
 - (b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and
 - (c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;
- (3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;
- (4) records, the disclosure of which could cause commercial injury to, or confer a

competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

- (5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;
- (6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties:

(a) a bid, proposal, application, or other information submitted to or by a governmental entity in response to:

- (i) an invitation for bids;
- (ii) a request for proposals;
- (iii) a request for quotes;
- (iv) a grant; or
- (v) other similar document; or

(b) an unsolicited proposal, as defined in Section 63G-6a-712;

- (7) information submitted to or by a governmental entity in response to a request for information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict the right of a person to have access to the information, after:

(a) a contract directly relating to the subject of the request for information has been awarded and signed by all parties; or

(b)(i) a final determination is made not to enter into a contract that relates to the subject of the request for information; and

- (ii) at least two years have passed after the day on which the request for information is issued;

- (8) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information is greater than or equal to the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described

property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(9) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access is greater than or equal to the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

- 131 (11) records the disclosure of which would jeopardize the life or safety of an individual;
- 132 (12) records the disclosure of which would jeopardize the security of governmental
- 133 property, governmental programs, or governmental recordkeeping systems from
- 134 damage, theft, or other appropriation or use contrary to law or public policy;
- 135 (13) records that, if disclosed, would jeopardize the security or safety of a correctional
- 136 facility, or records relating to incarceration, treatment, probation, or parole, that would
- 137 interfere with the control and supervision of an offender's incarceration, treatment,
- 138 probation, or parole;
- 139 (14) records that, if disclosed, would reveal recommendations made to the Board of
- 140 Pardons and Parole by an employee of or contractor for the Department of Corrections,
- 141 the Board of Pardons and Parole, or the Department of Health and Human Services that
- 142 are based on the employee's or contractor's supervision, diagnosis, or treatment of any
- 143 person within the board's jurisdiction;
- 144 (15) records and audit workpapers that identify audit, collection, and operational procedures
- 145 and methods used by the State Tax Commission, if disclosure would interfere with
- 146 audits or collections;
- 147 (16) records of a governmental audit agency relating to an ongoing or planned audit until
- 148 the final audit is released;
- 149 (17) records that are subject to the attorney client privilege;
- 150 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,
- 151 employee, or agent of a governmental entity for, or in anticipation of, litigation or a
- 152 judicial, quasi-judicial, or administrative proceeding;
- 153 (19)(a)(i) personal files of a state legislator, including personal correspondence to or
- 154 from a member of the Legislature; and
- 155 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
- 156 legislative action or policy may not be classified as protected under this section;
- 157 and
- 158 (b)(i) an internal communication that is part of the deliberative process in connection
- 159 with the preparation of legislation between:
- 160 (A) members of a legislative body;
- 161 (B) a member of a legislative body and a member of the legislative body's staff; or
- 162 (C) members of a legislative body's staff; and
- 163 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
- 164 legislative action or policy may not be classified as protected under this section;

- 165 (20)(a) records in the custody or control of the Office of Legislative Research and
166 General Counsel, that, if disclosed, would reveal a particular legislator's
167 contemplated legislation or contemplated course of action before the legislator has
168 elected to support the legislation or course of action, or made the legislation or course
169 of action public; and
- 170 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
171 Office of Legislative Research and General Counsel is a public document unless a
172 legislator asks that the records requesting the legislation be maintained as protected
173 records until such time as the legislator elects to make the legislation or course of
174 action public;
- 175 (21) a research request from a legislator to a legislative staff member and research findings
176 prepared in response to the request;
- 177 (22) drafts, unless otherwise classified as public;
- 178 (23) records concerning a governmental entity's strategy about:
- 179 (a) collective bargaining; or
180 (b) imminent or pending litigation;
- 181 (24) records of investigations of loss occurrences and analyses of loss occurrences that may
182 be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
183 Uninsured Employers' Fund, or similar divisions in other governmental entities;
- 184 (25) records, other than personnel evaluations, that contain a personal recommendation
185 concerning an individual if disclosure would constitute a clearly unwarranted invasion
186 of personal privacy, or disclosure is not in the public interest;
- 187 (26) records that reveal the location of historic, prehistoric, paleontological, or biological
188 resources that if known would jeopardize the security of those resources or of valuable
189 historic, scientific, educational, or cultural information;
- 190 (27) records of independent state agencies if the disclosure of the records would conflict
191 with the fiduciary obligations of the agency;
- 192 (28) records of an institution within the state system of higher education defined in Section
193 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
194 retention decisions, and promotions, which could be properly discussed in a meeting
195 closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided
196 that records of the final decisions about tenure, appointments, retention, promotions, or
197 those students admitted, may not be classified as protected under this section;
- 198 (29) records of the governor's office, including budget recommendations, legislative

proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in

233 Section 53B-1-102, the governmental unit to which the donation is made is primarily
234 engaged in educational, charitable, or artistic endeavors, and has no regulatory or
235 legislative authority over the donor, a member of the donor's immediate family, or
236 any entity owned or controlled by the donor or the donor's immediate family;
237 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;
238 (39) a notification of workers' compensation insurance coverage described in Section
239 34A-2-205;
240 (40)(a) the following records of an institution within the state system of higher education
241 defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
242 or received by or on behalf of faculty, staff, employees, or students of the institution:
243 (i) unpublished lecture notes;
244 (ii) unpublished notes, data, and information:
245 (A) relating to research; and
246 (B) of:
247 (I) the institution within the state system of higher education defined in Section
248 53B-1-102; or
249 (II) a sponsor of sponsored research;
250 (iii) unpublished manuscripts;
251 (iv) creative works in process;
252 (v) scholarly correspondence; and
253 (vi) confidential information contained in research proposals;
254 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public information
255 required pursuant to Subsection 53B-16-302(2)(a) or (b); and
256 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
257 (41)(a) records in the custody or control of the Office of the Legislative Auditor General
258 that would reveal the name of a particular legislator who requests a legislative audit
259 prior to the date that audit is completed and made public; and
260 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
261 Office of the Legislative Auditor General is a public document unless the legislator
262 asks that the records in the custody or control of the Office of the Legislative Auditor
263 General that would reveal the name of a particular legislator who requests a
264 legislative audit be maintained as protected records until the audit is completed and
265 made public;
266 (42) records that provide detail as to the location of an explosive, including a map or other

document that indicates the location of:

(a) a production facility; or

(b) a magazine;

(43) information contained in the statewide database of the Division of Aging and Adult Services created by Section 26B-6-210;

(44) information contained in the Licensing Information System described in Title 80, Chapter 2, Child Welfare Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of which would jeopardize:

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of Emergency Management information;

(49) records of the Department of Agriculture and Food that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control of Animal Disease;

(50) as provided in Section 26B-2-709:

(a) information or records held by the Department of Health and Human Services related to a complaint regarding a provider, program, or facility which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health and Human Services from an anonymous complainant regarding a provider, program,

or facility;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

(i) the nature of the law, ordinance, rule, or order; and

(ii) the individual complying with the law, ordinance, rule, or order;

(52) the portion of the following documents that contains a candidate's residential or mailing address, if the candidate provides to the filing officer another address or phone number where the candidate may be contacted:

(a) a declaration of candidacy, a nomination petition, or a certificate of nomination, described in Section 20A-9-201, 20A-9-202, 20A-9-203, 20A-9-404, 20A-9-405, 20A-9-408, 20A-9-408.5, 20A-9-502, or 20A-9-601;

(b) an affidavit of impecuniosity, described in Section 20A-9-201; or

(c) a notice of intent to gather signatures for candidacy, described in Section 20A-9-408;

(53) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote, in relation to whether a judge meets or exceeds minimum performance standards under Subsection 78A-12-203(4), and information disclosed under Subsection 78A-12-203(5)(e);

(55) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

(56) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63L-11-202;

- 335 (57) information requested by and provided to the 911 Division under Section 63H-7a-302;
336 (58) in accordance with Section 73-10-33:
- 337 (a) a management plan for a water conveyance facility in the possession of the Division
338 of Water Resources or the Board of Water Resources; or
- 339 (b) an outline of an emergency response plan in possession of the state or a county or
340 municipality;
- 341 (59) the following records in the custody or control of the Office of Inspector General of
342 Medicaid Services, created in Section 63A-13-201:
- 343 (a) records that would disclose information relating to allegations of personal
344 misconduct, gross mismanagement, or illegal activity of a person if the information
345 or allegation cannot be corroborated by the Office of Inspector General of Medicaid
346 Services through other documents or evidence, and the records relating to the
347 allegation are not relied upon by the Office of Inspector General of Medicaid
348 Services in preparing a final investigation report or final audit report;
- 349 (b) records and audit workpapers to the extent they would disclose the identity of a
350 person who, during the course of an investigation or audit, communicated the
351 existence of any Medicaid fraud, waste, or abuse, or a violation or suspected
352 violation of a law, rule, or regulation adopted under the laws of this state, a political
353 subdivision of the state, or any recognized entity of the United States, if the
354 information was disclosed on the condition that the identity of the person be
355 protected;
- 356 (c) before the time that an investigation or audit is completed and the final investigation
357 or final audit report is released, records or drafts circulated to a person who is not an
358 employee or head of a governmental entity for the person's response or information;
- 359 (d) records that would disclose an outline or part of any investigation, audit survey plan,
360 or audit program; or
- 361 (e) requests for an investigation or audit, if disclosure would risk circumvention of an
362 investigation or audit;
- 363 (60) records that reveal methods used by the Office of Inspector General of Medicaid
364 Services, the fraud unit, or the Department of Health and Human Services, to discover
365 Medicaid fraud, waste, or abuse;
- 366 (61) information provided to the Department of Health and Human Services or the Division
367 of Professional Licensing under Subsections 58-67-304(3) and (4) and Subsections
368 58-68-304(3) and (4);

- 369 (62) a record described in Section 63G-12-210;
- 370 (63) captured plate data that is obtained through an automatic license plate reader system
371 used by a governmental entity as authorized in Section 41-6a-2003;
- 372 (64) an audio or video recording created by a body-worn camera, as that term is defined in
373 Section 77-7a-103, that records sound or images inside a hospital or health care facility
374 as those terms are defined in Section 78B-3-403, inside a clinic of a health care provider,
375 as that term is defined in Section 78B-3-403, or inside a human service program as that
376 term is defined in Section 26B-2-101, except for recordings that:
- 377 (a) depict the commission of an alleged crime;
- 378 (b) record any encounter between a law enforcement officer and a person that results in
379 death or bodily injury, or includes an instance when an officer fires a weapon;
- 380 (c) record any encounter that is the subject of a complaint or a legal proceeding against a
381 law enforcement officer or law enforcement agency;
- 382 (d) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(f);
383 or
- 384 (e) have been requested for reclassification as a public record by a subject or authorized
385 agent of a subject featured in the recording;
- 386 (65) a record pertaining to the search process for a president of an institution of higher
387 education described in Section 53B-2-102, except for application materials for a publicly
388 announced finalist;
- 389 (66) an audio recording that is:
- 390 (a) produced by an audio recording device that is used in conjunction with a device or
391 piece of equipment designed or intended for resuscitating an individual or for treating
392 an individual with a life-threatening condition;
- 393 (b) produced during an emergency event when an individual employed to provide law
394 enforcement, fire protection, paramedic, emergency medical, or other first responder
395 service:
- 396 (i) is responding to an individual needing resuscitation or with a life-threatening
397 condition; and
- 398 (ii) uses a device or piece of equipment designed or intended for resuscitating an
399 individual or for treating an individual with a life-threatening condition; and
- 400 (c) intended and used for purposes of training emergency responders how to improve
401 their response to an emergency situation;
- 402 (67) records submitted by or prepared in relation to an applicant seeking a recommendation

by the Research and General Counsel Subcommittee, the Budget Subcommittee, or the Audit Subcommittee, established under Section 36-12-8, for an employment position with the Legislature;

(68) work papers as defined in Section 31A-2-204;

(69) a record made available to Adult Protective Services or a law enforcement agency under Section 61-1-206;

(70) a record submitted to the Insurance Department in accordance with Section 31A-37-201;

(71) a record described in Section 31A-37-503;

(72) any record created by the Division of Professional Licensing as a result of Subsection 58-37f-304(5) or 58-37f-702(2)(a)(ii);

(73) a record described in Section 72-16-306 that relates to the reporting of an injury involving an amusement ride;

(74) except as provided in Subsection 63G-2-305.5(1), the signature of an individual on a political petition, or on a request to withdraw a signature from a political petition, including a petition or request described in the following titles:

(a) Title 10, Utah Municipal Code;

(b) Title 17, Counties;

(c) Title 17B, Limited Purpose Local Government Entities - Special Districts;

(d) Title 17D, Limited Purpose Local Government Entities - Other Entities; and

(e) Title 20A, Election Code;

(75) except as provided in Subsection 63G-2-305.5(2), the signature of an individual in a voter registration record;

(76) except as provided in Subsection 63G-2-305.5(3), any signature, other than a signature described in Subsection (74) or (75), in the custody of the lieutenant governor or a local political subdivision collected or held under, or in relation to, Title 20A, Election Code;

(77) a Form I-918 Supplement B certification as described in Title 77, Chapter 38, Part 5, Victims Guidelines for Prosecutors Act;

(78) a record submitted to the Insurance Department under Section 31A-48-103;

(79) personal information, as defined in Section 63G-26-102, to the extent disclosure is prohibited under Section 63G-26-103;

(80) an image taken of an individual during the process of booking the individual into jail, unless:

(a) the individual is convicted of a criminal offense based upon the conduct for which

- 437 the individual was incarcerated at the time the image was taken;
- 438 (b) a law enforcement agency releases or disseminates the image:
- 439 (i) after determining that the individual is a fugitive or an imminent threat to an
- 440 individual or to public safety and releasing or disseminating the image will assist
- 441 in apprehending the individual or reducing or eliminating the threat; or
- 442 (ii) to a potential witness or other individual with direct knowledge of events relevant
- 443 to a criminal investigation or criminal proceeding for the purpose of identifying or
- 444 locating an individual in connection with the criminal investigation or criminal
- 445 proceeding;
- 446 (c) a judge orders the release or dissemination of the image based on a finding that the
- 447 release or dissemination is in furtherance of a legitimate law enforcement interest; or
- 448 (d) the image is displayed to a person who is permitted to view the image under Section
- 449 17-22-30[-] ;
- 450 (81) a record:
- 451 (a) concerning an interstate claim to the use of waters in the Colorado River system;
- 452 (b) relating to a judicial proceeding, administrative proceeding, or negotiation with a
- 453 representative from another state or the federal government as provided in Section
- 454 63M-14-205; and
- 455 (c) the disclosure of which would:
- 456 (i) reveal a legal strategy relating to the state's claim to the use of the water in the
- 457 Colorado River system;
- 458 (ii) harm the ability of the Colorado River Authority of Utah or river commissioner to
- 459 negotiate the best terms and conditions regarding the use of water in the Colorado
- 460 River system; or
- 461 (iii) give an advantage to another state or to the federal government in negotiations
- 462 regarding the use of water in the Colorado River system;
- 463 (82) any part of an application described in Section 63N-16-201 that the Governor's Office
- 464 of Economic Opportunity determines is nonpublic, confidential information that if
- 465 disclosed would result in actual economic harm to the applicant, but this Subsection (82)
- 466 may not be used to restrict access to a record evidencing a final contract or approval
- 467 decision;
- 468 (83) the following records of a drinking water or wastewater facility:
- 469 (a) an engineering or architectural drawing of the drinking water or wastewater facility;
- 470 and

(b) except as provided in Section 63G-2-106, a record detailing tools or processes the drinking water or wastewater facility uses to secure, or prohibit access to, the records described in Subsection (83)(a);

(84) a statement that an employee of a governmental entity provides to the governmental entity as part of the governmental entity's personnel or administrative investigation into potential misconduct involving the employee if the governmental entity:

(a) requires the statement under threat of employment disciplinary action, including possible termination of employment, for the employee's refusal to provide the statement; and

(b) provides the employee assurance that the statement cannot be used against the employee in any criminal proceeding;

(85) any part of an application for a Utah Fits All Scholarship account described in Section 53F-6-402 or other information identifying a scholarship student as defined in Section 53F-6-401;

(86) a record:

(a) concerning a claim to the use of waters in the Great Salt Lake;

(b) relating to a judicial proceeding, administrative proceeding, or negotiation with a person concerning the claim, including a representative from another state or the federal government; and

(c) the disclosure of which would:

(i) reveal a legal strategy relating to the state's claim to the use of the water in the Great Salt Lake;

(ii) harm the ability of the Great Salt Lake commissioner to negotiate the best terms and conditions regarding the use of water in the Great Salt Lake; or

(iii) give an advantage to another person including another state or to the federal government in negotiations regarding the use of water in the Great Salt Lake; [and]

(87) a consumer complaint described in Section 13-2-11, unless the consumer complaint is reclassified as public as described in Subsection 13-2-11(4)[] ;

(88) a record of the Utah water agent, appointed under Section 73-10g-702:

(a) concerning a claim to the use of waters;

(b) relating to a judicial proceeding, administrative proceeding, or negotiation with a representative from another state, a tribe, the federal government, or other government entity as provided in Title 73, Chapter 10g, Part 6, Utah Water Agent; and

(c) the disclosure of which would:

(i) reveal a legal strategy relating to the state's claim to the use of the water;

(ii) harm the ability of the Utah water agent to negotiate the best terms and conditions regarding the use of water; or

(iii) give an advantage to another state, a tribe, the federal government, or other government entity in negotiations regarding the use of water[-] ; and

(89) a complaint, or a document with any personal identifying information that is submitted or created for a complaint, described in Title 78A, Chapter 9, Part 2, Prosecutor Conduct Commission.

Section 2. Section **78A-9-201** is enacted to read:

Part 2. Prosecutor Conduct Commission

78A-9-201 . Definitions for part.

As used in this part:

(1) "Commission" means the Prosecutor Conduct Commission created in Section 78A-9-202.

(2) "Complaint" means:

(a) a written complaint regarding professional misconduct by a prosecuting attorney; or

(b) an allegation based on reliable information received in any form, from any source, that alleges, or from which a reasonable inference can be drawn that a prosecuting attorney has committed professional misconduct.

(3) "Employer" means:

(a) except as provided in Subsection (3)(b) or (c), the attorney general, a district attorney, a county attorney, or a municipal attorney who employs the prosecuting attorney;

(b) the chief executive officer of the political subdivision that employs the prosecuting attorney if the prosecuting attorney is a district or county attorney or a municipal attorney; or

(c) the governor if the prosecuting attorney is the attorney general.

(4) "Investigation" means an inquiry into a complaint.

(5) "Knowingly" means the prosecuting attorney took an action, or failed to take an action, with the knowledge that the natural or probable consequences are unambiguously prohibited by a legal obligation or professional standard.

(6) "Legal obligation" means an obligation imposed by the Utah Constitution, the Constitution of the United States, a statute, a rule of procedure or evidence, or a local rule.

(7) "Professional misconduct" means:

- (a) the prosecuting attorney purposefully or intentionally violated, or recklessly disregarded, a clear and unambiguous legal obligation or professional standard for a prosecuting attorney; and
- (b) the violation impacted, or reasonably could have impacted, the substantive or procedural due rights of an individual accused of a crime.

(8) "Professional standard" means a standard of conduct imposed by Utah Rules of Professional Conduct.

(9) "Prosecuting attorney" means:

- (a) the attorney general or an assistant attorney general;
- (b) a district attorney or a deputy district attorney;
- (c) a county attorney or an assistant county attorney;
- (d) a municipal attorney or an assistant municipal attorney; or
- (e) an attorney authorized to commence an action on behalf of the state.

(10) "Purposefully" means the prosecuting attorney took an action, or failed to take an action, in order to obtain a result that is unambiguously prohibited by a legal obligation or professional standard.

(11) "Recklessly disregard" means the prosecuting attorney's conduct was a gross deviation from the standard of conduct for an objectively reasonable prosecuting attorney:

- (a) after considering the nature and the circumstances of a prosecuting attorney's conduct; and
- (b) by taking into account whether the prosecuting attorney knew, or should have known:
 - (i) based on the prosecuting attorney's experience, of the legal obligation or professional standard; and
 - (ii) the prosecuting attorney's conduct was substantially likely to violate a legal obligation or professional standard.

Section 3. Section **78A-9-202** is enacted to read:

78A-9-202 . Prosecutor Conduct Commission -- Members -- Terms -- Compensation -- Staff and expenses.

(1) There is created an independent commission called the Prosecutor Conduct Commission.

(2) The commission is composed of six members as follows:

- (a) an assistant attorney general who prosecutes criminal offenses full-time, appointed by the attorney general with the advice and consent of the Senate;
- (b) a county or district attorney, or an assistant county or district attorney, who

prosecutes criminal offenses full-time, appointed by the Statewide Association of Prosecutors and Public Attorneys with the advice and consent of the Senate;

(c) a municipal attorney, or an assistant municipal attorney, who prosecutes criminal offenses full-time, appointed by the Statewide Association of Prosecutors and Public Attorneys with the advice and consent of the Senate;

(d) a retired attorney whose primary caseload as an attorney was criminal defense, appointed by the executive director of the Commission on Criminal and Juvenile Justice with the advice and consent of the Senate; and

(e) two retired district or appellate court judges, appointed by the governor with the advice and consent of the Senate.

(3)(a) Except as provided in Subsection (4), a member appointed under Subsection (2) shall serve a four-year term.

(b) A member may serve no more than eight years.

(4) At the time of appointment, the terms of commission members shall be staggered so that approximately half of commission members' terms expire every two years.

(5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term by the same appointing authority that appointed the member creating the vacancy.

(6)(a) Three members of the commission constitutes a quorum.

(b) If a quorum is present, the action of a majority of the quorum constitutes the action of the commission.

(7)(a) The commission shall elect annually a chair and a vice chair from the commission's membership to serve a two-year term.

(b) A commission member may not serve as chair of the commission for more than three consecutive terms.

(8) The commission shall establish guidelines and procedures for the disqualification of any member from consideration of any matter.

(9) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance in accordance with Sections 63A-3-106 and 63A-3-107.

(10) Upon a majority vote of the commission, the commission may:

(a) employ an executive director, legal counsel, investigators, and other staff to assist the commission; and

(b) incur other reasonable and necessary expenses within the authorized budget of the commission and consistent with the duties of the commission.

Section 4. Section **78A-9-203** is enacted to read:

78A-9-203 . Functions and duties of the commission.

(1) The commission may:

(a) request that members of the public report instances of professional misconduct by a prosecuting attorney to the commission;

(b) receive, initiate, investigate, or hear complaints as described in Section 78A-9-204;

(c) report professional misconduct as described in Section 78A-9-205; and

(d) gather and publish data on claims of professional misconduct by prosecuting attorneys in this state.

(2) To enforce the provisions of this part, the commission may:

(a) administer an oath or affirmation;

(b) issue a subpoena, in accordance with the Utah Rules of Civil Procedure, that requires:

(i) the attendance and testimony of a witness; or

(ii) the production of evidence relevant to the investigation; and

(c) take evidence.

(3) A court shall enforce a subpoena issued by the commission.

(4) The commission shall pay any witness fee, travel expense, mileage, or any other fee required by the service statutes of the state where the witness or evidence is located.

Section 5. Section **78A-9-204** is enacted to read:

78A-9-204 . Complaint and investigation process.

(1)(a) A prosecuting attorney shall report:

(i) any alleged professional misconduct by another prosecuting attorney to that prosecuting attorney's employer; and

(ii) any statement by a judge or magistrate alleging that another prosecuting attorney has committed professional misconduct to that prosecuting attorney's employer.

(b) An employer of a prosecuting attorney shall:

(i) investigate any alleged professional misconduct by a prosecuting attorney; and

(ii) submit a complaint regarding the professional misconduct to the commission if the employer determines that the allegation is substantiated.

(2) An individual may submit a complaint to the commission alleging that a prosecuting

attorney has committed professional misconduct.

(3) The commission may, on a motion, initiate an investigation of alleged professional misconduct by a prosecuting attorney if:

(a) an individual submits a complaint and the commission determines that the complaint has merit; or

(b) the commission submits a complaint on behalf of the commission.

(4)(a) The commission may dismiss a complaint at any time if the commission determines that the complaint lacks merit.

(b) If a complaint submitted by an individual is dismissed, the commission shall notify the individual who submitted the complaint.

(5) The commission may investigate a complaint even if the prosecuting attorney has retired or resigned.

(6) If the commission moves to initiate an investigation of alleged professional misconduct by a prosecuting attorney, the commission shall:

(a) notify the prosecuting attorney of the investigation; and

(b) provide the prosecuting attorney with all information necessary to prepare an adequate response or defense, including the identity of the complainant.

(7) If the committee dismisses an investigation after notifying the prosecuting attorney as described in Subsection (4), the commission shall notify the prosecuting attorney of the dismissal.

(8) An employer may inquire of the commission as to whether there is a pending investigation against a prosecuting attorney.

(9)(a) In the course of an investigation, the commission may request that the prosecuting attorney testify before the commission.

(b) The prosecuting attorney's counsel may be present during the prosecuting attorney's testimony.

(c) The prosecuting attorney may present evidence and material relevant to the complaint.

(10) A governmental entity may provide the commission with a record under Section 63G-2-206.

(11)(a) A prosecuting agency, and an employee of a prosecuting agency, shall:

(i) cooperate with the commission in an investigation of a prosecuting attorney; and

(ii) respond truthfully to questions posed during the course of an investigation unless:

(A) the information is privileged or protected by statute or court rule; or

- (B) the employee asserts the employee's constitutional right to remain silent.
- (b) A prosecuting agency may subject an employee to discipline, including termination, if the employee refuses to cooperate with an investigation by the commission.
- (c) The dismissal or demotion of a career service employee under Subsection (11)(b) is subject to the requirements of Section 63A-17-306.

Section 6. Section **78A-9-205** is enacted to read:

78A-9-205 . Finding of professional misconduct -- Reporting of finding.

- (1)(a) Upon an investigation under Section 78A-9-204, the commission may make a finding, by a preponderance of the evidence, that a prosecuting attorney committed professional misconduct.
- (b) In determining whether a prosecuting attorney committed a violation under Subsection (1)(a), the commission may consider an affirmative action of the prosecuting attorney or an action that the prosecuting attorney failed to take.
- (2) If the commission finds that a prosecuting attorney committed professional misconduct, the commission shall notify the prosecuting attorney's employer of the commission's finding.
- (3) If the commission finds that a prosecuting attorney committed professional misconduct that is likely a criminal offense, the commission shall notify the appropriate law enforcement agency of the commission's finding.
- (4) If the commission finds that a prosecuting attorney committed professional misconduct that is likely a violation of the Utah Rules of Professional Conduct, the commission shall notify the Office of Professional Conduct of the commission's finding.
- (5)(a) Except as provided in Subsection (5)(c), the commission may disclose an investigation, including any finding by the commission or summary of the investigation, to an employer of the prosecuting attorney under Subsection (2), a law enforcement agency, or the Office of Professional Conduct.
- (b) Any documents disclosed under Subsection (5)(a) shall maintain the same classification under Title 63G, Chapter 2, Government Records Access and Management Act.
- (c) The commission may not disclose information or evidence under Subsection (5)(a) that is protected from disclosure by court order, a legal privilege, or given after having been issued a warning issued based on Garrity v. New Jersey, 385 U.S. 493 (1967).
- (6) The commission may not discipline or sanction a prosecuting attorney for any

professional misconduct.

Section 7. Section **78A-9-206** is enacted to read:

78A-9-206 . Annual reporting requirement to Legislature.

(1) Before November 1 of each year, the commission shall report to the Law Enforcement and Criminal Justice Interim Committee and the Judiciary Interim Committee on:

(a) the number of complaints received;

(b) the general nature of the complaints;

(c) the number of complaints dismissed without an investigation;

(d) the number of complaints investigated;

(e) the general findings and outcomes of investigations; and

(f) the name of any prosecuting agency that refused, without reasonable cause, to cooperate in an investigation by the commission.

(2) The commission may not include any personal identifying information regarding a prosecuting attorney in a report described in Subsection (1).

Section 8. Effective Date.

This bill takes effect on May 7, 2025.