

Title 63G. General Government

Chapter 1 State Symbols and Designations

Part 1 General Provisions

63G-1-101 Title.

- (1) This title is known as "General Government."
- (2) This chapter is known as "State Symbols and Designations."

Enacted by Chapter 382, 2008 General Session

Part 2 State Language

63G-1-201 Official state language.

English is declared to be the official language of Utah.

Amended by Chapter 409, 2021 General Session

Part 3 State Holidays

63G-1-301 Legal holidays -- Personal preference day -- Governor authorized to declare additional days.

- (1)
 - (a) The following named days are legal holidays in this state:
 - (i) every Sunday, except as provided in Subsection (1)(e);
 - (ii) January 1, called New Year's Day;
 - (iii) the third Monday of January, called Dr. Martin Luther King, Jr. Day;
 - (iv) the third Monday of February, called Washington and Lincoln Day;
 - (v) the last Monday of May, called Memorial Day;
 - (vi) on the day described in Subsection (1)(f), Juneteenth National Freedom Day;
 - (vii) July 4, called Independence Day;
 - (viii) July 24, called Pioneer Day;
 - (ix) the first Monday of September, called Labor Day;
 - (x) the second Monday of October, called Columbus Day;
 - (xi) November 11, called Veterans Day;
 - (xii) the fourth Thursday of November, called Thanksgiving Day;
 - (xiii) December 25, called Christmas; and
 - (xiv) all days which may be set apart by the President of the United States, or the governor of this state by proclamation as days of fast or thanksgiving.

- (b) If any of the holidays under Subsections (1)(a)(ii) through (v) or Subsections (1)(a)(vii) through (xiv), falls on Sunday, then the following Monday shall be the holiday.
- (c) If any of the holidays under Subsections (1)(a)(ii) through (v) or Subsections (1)(a)(vii) through (xiv) falls on Saturday, then the preceding Friday shall be the holiday.
- (d) Each employee may select one additional day, called Personal Preference Day, to be scheduled pursuant to rules adopted by the Division of Human Resource Management.
- (e) For purposes of Utah Constitution Article VI, Section 16, Subsection (1), regarding the exclusion of state holidays from the 45-day legislative general session, Sunday is not considered a state holiday.
- (f)
 - (i) The Juneteenth National Freedom Day holiday is on June 19, if that day is on a Monday.
 - (ii) If June 19 is on a Tuesday, Wednesday, Thursday, or Friday, the Juneteenth National Freedom Day holiday is on the immediately preceding Monday.
 - (iii) If June 19 is on a Saturday or Sunday, the Juneteenth National Freedom Day holiday is on the immediately following Monday.
- (2)
 - (a) Whenever in the governor's opinion extraordinary conditions exist justifying the action, the governor may:
 - (i) declare, by proclamation, legal holidays in addition to those holidays under Subsection (1); and
 - (ii) limit the holidays to certain classes of business and activities to be designated by the governor.
 - (b) A holiday may not extend for a longer period than 60 consecutive days.
 - (c) Any holiday may be renewed for one or more periods not exceeding 30 days each as the governor may consider necessary, and any holiday may, by like proclamation, be terminated before the expiration of the period for which it was declared.

Amended by Chapter 331, 2022 General Session

Part 4

State Commemorative Periods

63G-1-401 Commemorative periods.

- (1) As used in this section, "commemorative period" means a special observance declared by the governor that annually recognizes and honors a culturally or historically significant day, week, month, or other time period in the state.
- (2)
 - (a) The governor may declare a commemorative period by issuing a declaration.
 - (b) The governor shall maintain a list of all commemorative periods declared by the governor.
- (3)
 - (a) The governor's declaration of a commemorative period expires the year immediately following the day on which the governor issues the declaration.
 - (b) Subsection (3)(a) does not prevent the governor from redeclaring a commemorative period before or after the commemorative period expires.
- (4) Notwithstanding Subsections (2) and (3), the following days shall be commemorated annually:

- (a) Utah History Day at the Capitol, on the Friday immediately following the fourth Monday in January, to encourage citizens of the state, including students, to participate in activities that recognize Utah's history;
 - (b) Day of Remembrance for Incarceration of Japanese Americans, on February 19, in remembrance of the incarceration of Japanese Americans during World War II;
 - (c) Utah State Flag Day, on March 9;
 - (d) Vietnam Veterans Recognition Day, on March 29;
 - (e) Utah Railroad Workers Day, on May 10;
 - (f) Dandy-Walker Syndrome Awareness Day, on May 11;
 - (g) Armed Forces Day, on the third Saturday in May, in honor of men and women who are serving or have served in the United States Armed Forces around the world in defense of freedom;
 - (h) Arthrogyriposis Multiplex Congenita Awareness Day, on June 30;
 - (i) Navajo Code Talker Day, on August 14;
 - (j) Rachael Runyan/Missing and Exploited Children's Day, on August 26, the anniversary of the day three-year-old Rachael Runyan was kidnaped from a playground in Sunset, Utah, to:
 - (i) encourage individuals to make child safety a priority;
 - (ii) remember the importance of continued efforts to reunite missing children with their families; and
 - (iii) honor Rachael Runyan and all Utah children who have been abducted or exploited;
 - (k) September 11th Day of Remembrance, on September 11, in honor and remembrance of the first responders and persons killed and injured in the terrorist attacks on September 11, 2001;
 - (l) Constitution Day, on September 17, to invite all Utah adults and Utah school children to read directly from the United States Constitution and other primary sources, and for students to be taught principles from the United States Constitution that include federalism, checks and balances, separation of powers, popular sovereignty, limited government, and the necessary and proper, commerce, and supremacy clauses;
 - (m) POW/MIA Recognition Day, on the third Friday in September;
 - (n) Diwali, on the fifteenth day of the Hindu lunisolar month of Kartik, known as Lakshmi puja, or the Hindu festival of lights;
 - (o) Victims of Communism Memorial Day, on November 7;
 - (p) Indigenous People Day, on the Monday immediately preceding Thanksgiving; and
 - (q) Bill of Rights Day, on December 15.
- (5) The Department of Veterans and Military Affairs shall coordinate activities, special programs, and promotional information to heighten public awareness and involvement relating to Subsections (4)(g) and (m).
- (6) The month of April shall be commemorated annually as Clean Out the Medicine Cabinet Month to:
- (a) recognize the urgent need to make Utah homes and neighborhoods safe from prescription medication abuse and poisonings by the proper home storage and disposal of prescription and over-the-counter medications; and
 - (b) educate citizens about the permanent medication disposal sites in Utah listed on useonlyasdirected.org that allow disposal throughout the year.
- (7) The second full week of April shall be commemorated annually as Animal Care and Control Appreciation Week to recognize and increase awareness within the community of the services that animal care and control professionals provide.
- (8) The first full week of May shall be commemorated annually as State Water Week to recognize the importance of water conservation, quality, and supply in the state.

- (9) The third full week of June shall be commemorated annually as Workplace Safety Week to heighten public awareness regarding the importance of safety in the workplace.
- (10) The second Friday and Saturday in August shall be commemorated annually as Utah Fallen Heroes Days to:
 - (a) honor fallen heroes who, during service in the military or public safety, have sacrificed their lives to protect the country and the citizens of the state; and
 - (b) encourage political subdivisions to acknowledge and honor fallen heroes.
- (11) The third full week in August shall be commemorated annually as Drowsy Driving Awareness Week to:
 - (a) educate the public about the relationship between fatigue and driving performance; and
 - (b) encourage the Department of Public Safety and the Department of Transportation to recognize and promote educational efforts on the dangers of drowsy driving.
- (12) The month of September shall be commemorated annually as American Founders and Constitution Month to:
 - (a) encourage all civic, fraternal, and religious organizations, and public and private educational institutions, to recognize and observe this occasion through appropriate programs, teaching, meetings, services, or celebrations in which state, county, and local governmental officials are invited to participate; and
 - (b) invite all Utah school children to read directly from the United States Constitution and other primary sources, and to be taught principles from the United States Constitution that include federalism, checks and balances, separation of powers, popular sovereignty, limited government, and the necessary and proper, commerce, and supremacy clauses.
- (13) The third full week of September shall be commemorated annually as Gang Prevention Awareness Week.
- (14) The month of October shall be commemorated annually as Italian-American Heritage Month.
- (15) The month of November shall be commemorated annually as American Indian Heritage Month.
- (16) The first full week of December shall be commemorated annually as Avalanche Awareness Week to:
 - (a) educate the public about avalanche awareness and safety;
 - (b) encourage collaborative efforts to decrease annual avalanche accidents and fatalities; and
 - (c) honor Utah residents who have lost their lives in avalanches, including those who lost their lives working to prevent avalanches.

Amended by Chapter 377, 2024 General Session

Part 5 State Flags

63G-1-501 State flag -- Description -- Image -- Display.

- (1) The state flag of Utah shall be a rectangle that has a width to length ratio of three to five and contain the following:
 - (a) two irregular, horizontal lines dividing the flag into three separate segments, of which:
 - (i) the top segment:
 - (A) is located above the higher horizontal line; and
 - (B) is shaded in blue;

- (ii) the middle segment:
 - (A) is located between the two horizontal lines;
 - (B) is shaded in white;
 - (C) at the higher horizontal line, takes the shape of a mountain with five peaks, the center peak being the tallest and following the shape of the highest point of the hexagon described in Subsection (1)(b); and
 - (D) at the lower horizontal line, follows the shape of the lowest point of the hexagon described in Subsection (1)(b); and
 - (iii) the bottom segment:
 - (A) is located below the lower horizontal line; and
 - (B) is shaded in red;
 - (b) one hexagon that:
 - (i) is shaded in blue;
 - (ii) contains a smaller gold hexagon outline; and
 - (iii) is placed within the center of the middle segment described in Subsection (1)(a)(ii);
 - (c) one beehive that:
 - (i) is shaded in gold;
 - (ii) contains five hive sections with a small semicircle removed from the center of the base of the lowest section; and
 - (iii) is placed within the center of the hexagon described in Subsection (1)(b); and
 - (d) one five-pointed Utah star that:
 - (i) is shaded in white; and
 - (ii) is placed below the center of the beehive described in Subsection (1)(c).
- (2) The state flag shall represent and symbolize the following:
- (a) the beehive described in Subsection (1)(c) symbolizes industry, community, and the year 1847, the year in which pioneers first settled Utah;
 - (b) the Utah star described in Subsection (1)(d) symbolizes hope and the year 1896, the year in which Utah was admitted to statehood;
 - (c) the hexagon described in Subsection (1)(b) symbolizes the strength of Utah's people;
 - (d) the top segment described in Subsection (1)(a)(i) represents Utah's skies and symbolizes faith;
 - (e) the middle segment described in Subsection (1)(a)(ii) represents Utah's snowy mountains and peace, the peaks of which symbolize Utah's indigenous peoples; and
 - (f) the bottom segment described in Subsection (1)(a)(iii) represents the red rocks of Southern Utah and symbolizes perseverance and the state's unique landscapes.
- (3) The state flag shall appear consistent with the following image:



- (4) The state flag shall be available in the public domain and be displayed on all occasions when the state is officially and publicly represented, with the privilege of use by all citizens upon any occasion deemed fitting and appropriate.
- (5) The lieutenant governor shall establish standards and specifications for the manufacture and display of the state flag.

Repealed and Re-enacted by Chapter 451, 2023 General Session

63G-1-503 Historic state flag -- Description -- Image -- Display.

- (1) The historic state flag shall be a flag of blue field, with the following device worked in natural colors on the center of the blue field:
 - (a) in the center a shield;
 - (b) above the shield and thereon an American eagle with outstretched wings;
 - (c) the top of the shield pierced with six arrows arranged crosswise;
 - (d) upon the shield under the arrows the word "Industry," and below the word "Industry" on the center of the shield, a beehive;
 - (e) on each side of the beehive, growing sego lilies;
 - (f) below the beehive and near the bottom of the shield, the word "Utah";
 - (g) below the word "Utah" and on the bottom of the shield, the figures "1847";
 - (h) behind the shield, there shall be two American flags on flagstuffs placed crosswise with the flags so draped to project beyond each side of the shield, the heads of the flagstuffs appearing in front of the eagle's wings and the bottom of each staff appearing over the face of the draped flag below the shield;
 - (i) below the shield and flags and upon the blue field, the figures "1896"; and
 - (j) around the entire design, a narrow circle in gold.
- (2) The historic state flag shall appear consistent with any of the following three images:





- (3) All citizens maintain the right to use the historic state flag upon any occasion deemed fitting and appropriate.
- (4) The lieutenant governor shall establish standards and specifications for the manufacture and display of the historic state flag.
- (5) The historic state flag shall be displayed:
 - (a) on state property during legal holidays described in Section 63G-1-301, as deemed appropriate by the governor; and
 - (b) at capitol hill, as defined in Section 63O-1-101, during the annual general session of the Legislature.
- (6)
 - (a) The historic state flag may be displayed on state property for ceremonial purposes, so long as the flag is serviceable.

- (b) The historic state flag shall be replaced by the state flag of Utah, as described in Section 63G-1-501, when the historic state flag is not displayed for ceremonial purposes.
- (c) When displaying the historic state flag on public grounds in any location where the state flag of Utah, as described in Section 63G-1-501, is also displayed, the governmental entity responsible for the display of the flags shall ensure that the historic state flag is displayed beneath the state flag of Utah.

Amended by Chapter 425, 2024 General Session

Part 6 State Symbols

63G-1-601 State symbols.

- (1) Utah's state animal is the elk.
- (2) Utah's state bird is the sea gull.
- (3) Utah's state bird of prey is the golden eagle.
- (4) Utah's state centennial astronomical symbol is the Beehive Cluster located in the constellation of Cancer the Crab.
- (5) Utah's state centennial star is Dubhe, one of the seven bright stars composing the Big Dipper in the constellation Ursa Major.
- (6) Utah's state centennial tartan, which honors the first Scots known to have been in Utah and those Utahns of Scottish heritage, shall have a pattern or repeating-half-sett of white-2, blue-6, red-6, blue-4, red-6, green-18, red-6, and white-4 to represent the tartan worn anciently by the Logan and Skene clans, with the addition of a white stripe.
- (7) Utah's state cooking pot is the dutch oven.
- (8) Utah's state crustacean is the *Artemia franciscana*, or brine shrimp.
- (9) Utah's state dinosaur is the Utahraptor.
- (10) Utah's state emblem is the beehive.
- (11) Utah's state emblem of service and sacrifice of lives lost by members of the military in defense of our freedom is the "Honor and Remember" flag, which consists of:
 - (a) a red field covering the top two-thirds of the flag;
 - (b) a white field covering the bottom one-third of the flag, which contains the words "honor" and "remember";
 - (c) a blue star overlaid by a gold star with a thin white border in the center of the flag spanning the red field and the white field; and
 - (d) a representation of a folded United States flag beneath the blue and gold stars with three tongues of flame emanating from its top point into the center of the gold star.
- (12) Utah's state firearm is the John M. Browning designed M1911 automatic pistol.
- (13) Utah's state fish is the Bonneville cutthroat trout.
- (14) Utah's state flower is the sego lily.
- (15) Utah's state folk dance is the square dance, the folk dance that is called, cued, or prompted to the dancers and includes squares, rounds, clogging, contra, line, and heritage dances.
- (16) Utah's state fossil is the Allosaurus.
- (17) Utah's state fruit is the cherry.
- (18) Utah's state gem is topaz, as is prominently found in the Thomas Mountain Range in Juab County, Utah.

- (19) Utah's state grass is Indian rice grass.
- (20) Utah's state hymn is "Utah We Love Thee" by Evan Stephens.
- (21) Utah's state insect is the honeybee.
- (22) Utah's state military museum is the Fort Douglas Military Museum.
- (23) Utah's state mineral is copper.
- (24) Utah's state motto is "Industry."
- (25) Utah's state mushroom is the porcini.
- (26) Utah's state railroad museum is Ogden Union Station.
- (27) Utah's state reptile is the Gila Monster (*Heloderma suspectum*), whose habitat includes Southwest Utah.
- (28) Utah's state rock is coal.
- (29) Utah's state song is "Utah This is the Place" by Sam and Gary Francis.
- (30) Utah's state stone is honeycomb calcite, which originates in Duchesne County, Utah.
- (31) Utah's state tree is the quaking aspen.
- (32) Utah's state vegetable is the Spanish sweet onion.
- (33) Utah's historic state vegetable is the sugar beet.
- (34) Utah's state winter sports are skiing and snowboarding.
- (35) Utah's state works of art are Native American rock art.
- (36) Utah's state work of land art is the Spiral Jetty.

Amended by Chapter 337, 2023 General Session
Amended by Chapter 338, 2023 General Session

Part 7

Display of Flags by a Government Entity

63G-1-701 Title.

This part is known as "Display of Flags by a Government Entity."

Enacted by Chapter 90, 2013 General Session

63G-1-702 Definitions.

As used in this part:

- (1) "Capitol hill complex" means capitol hill, as defined in Section 63O-1-101.
- (2)
 - (a) "Flag" means a depiction or emblem made from fabric or cloth.
 - (b) "Flag" does not include a depiction or emblem made from:
 - (i) lights;
 - (ii) paint;
 - (iii) roofing;
 - (iv) siding;
 - (v) paving materials;
 - (vi) flora;
 - (vii) balloons; or
 - (viii) any other building, landscaping, or decorative component other than fabric or cloth.

- (3) "Flag of the United States" is the flag described in United States Code Title 4, Chapter 1, The Flag.
- (4) "POW/MIA flag" means the POW/MIA flag of the National League of Families of American Prisoners and Missing in Southeast Asia.

Amended by Chapter 425, 2024 General Session

63G-1-703 Display of POW/MIA flag.

- (1) In any place at the capitol hill complex, with the exception of the Utah Law Enforcement Memorial, where the United States flag is displayed out of doors, the entity responsible for the display of the United States flag shall display the POW/MIA flag, in the manner described in Subsection (3), from sunrise to sunset on the following days:
 - (a) Armed Forces Day, the third Saturday in May;
 - (b) Memorial Day, the last Monday in May;
 - (c) Flag Day, June 14;
 - (d) Independence Day, July 4;
 - (e) Veterans Day, November 11; and
 - (f) National POW/MIA Recognition Day, the third Friday in September.
- (2) The Department of Veterans and Military Affairs shall ensure that, in any place where the United States flag is displayed out of doors at a cemetery that is operated by the Department of Veterans and Military Affairs, the POW/MIA flag is displayed in the manner described in Subsection (3).
- (3) When displaying the POW/MIA flag under Subsection (1) or (2), the entity responsible to display the flag shall fly or hang the POW/MIA flag as follows:
 - (a) if the United States flag and the POW/MIA flag are attached to the same flag pole, by placing the POW/MIA flag directly under the United States flag; or
 - (b) if the United States flag and the POW/MIA flag are displayed near each other, but not on the same flag pole, by placing the top of the POW/MIA flag below the top of the United States flag.

Amended by Chapter 299, 2021 General Session

Part 9
Daylight Saving Time

(Contingently Effective)

63G-1-901 Year-round daylight saving time.

- (1) As used in this section:
 - (a) "Mountain daylight time" means the period during a year when mountain standard time is advanced one hour in accordance with 15 U.S.C. Sec. 260a.
 - (b) "Mountain standard time" means the observed time assigned to the mountain time zone in 15 U.S.C. Sec. 261.
- (2) Utah exempts all areas of the state from standard time.
- (3) The year-round observed time of the entire state and all of the state's political subdivisions is mountain daylight time.

Enacted by Chapter 247, 2020 General Session

Part 10 State Living Historic Landmark

63G-1-1001 Living historic landmarks.

- (1) As used in this part, "living historic landmark" means a cultural event:
 - (a) that is significant to the history, culture, economy, and character of the state;
 - (b) that is unique to the state;
 - (c) that is first in the nation;
 - (d) that has occurred in the state at least annually for no less than 65 years;
 - (e) for any designation after May 1, 2024, that is nominated by the Legislative Management Committee for the Legislature's consideration as a living historic landmark; and
 - (f) that the Legislature designates as a living historic landmark in Section 63G-1-1002.
- (2) A living historic landmark is not owned or managed by the state.

Enacted by Chapter 515, 2024 General Session

63G-1-1002 Living historic landmarks designated.

Ballet West's production of Willam Christensen's "The Nutcracker" is designated as a living historic landmark.

Enacted by Chapter 515, 2024 General Session

Chapter 2 Government Records Access and Management Act

Part 1 General Provisions

63G-2-101 Title.

This chapter is known as the "Government Records Access and Management Act."

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-102 Legislative intent.

- (1) In enacting this act, the Legislature recognizes two constitutional rights:
 - (a) the public's right of access to information concerning the conduct of the public's business; and
 - (b) the right of privacy in relation to personal data gathered by governmental entities.
- (2) The Legislature also recognizes a public policy interest in allowing a government to restrict access to certain records, as specified in this chapter, for the public good.
- (3) It is the intent of the Legislature to:
 - (a) promote the public's right of easy and reasonable access to unrestricted public records;

- (b) specify those conditions under which the public interest in allowing restrictions on access to records may outweigh the public's interest in access;
- (c) prevent abuse of confidentiality by governmental entities by permitting confidential treatment of records only as provided in this chapter;
- (d) provide guidelines for both disclosure and restrictions on access to government records, which are based on the equitable weighing of the pertinent interests and which are consistent with nationwide standards of information practices;
- (e) favor public access when, in the application of this act, countervailing interests are of equal weight; and
- (f) establish fair and reasonable records management practices.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-103 Definitions.

As used in this chapter:

- (1) "Audit" means:
 - (a) a systematic examination of financial, management, program, and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or
 - (b) a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.
- (2) "Chronological logs" mean the regular and customary summary records of law enforcement agencies and other public safety agencies that show:
 - (a) the time and general nature of police, fire, and paramedic calls made to the agency; and
 - (b) any arrests or jail bookings made by the agency.
- (3) "Classification," "classify," and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).
- (4)
 - (a) "Computer program" means:
 - (i) a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system; and
 - (ii) any associated documentation and source material that explain how to operate the computer program.
 - (b) "Computer program" does not mean:
 - (i) the original data, including numbers, text, voice, graphics, and images;
 - (ii) analysis, compilation, and other manipulated forms of the original data produced by use of the program; or
 - (iii) the mathematical or statistical formulas, excluding the underlying mathematical algorithms contained in the program, that would be used if the manipulated forms of the original data were to be produced manually.
- (5)
 - (a) "Contractor" means:
 - (i) any person who contracts with a governmental entity to provide goods or services directly to a governmental entity; or
 - (ii) any private, nonprofit organization that receives funds from a governmental entity.

- (b) "Contractor" does not mean a private provider.
- (6) "Controlled record" means a record containing data on individuals that is controlled as provided by Section 63G-2-304.
- (7) "Designation," "designate," and their derivative forms mean indicating, based on a governmental entity's familiarity with a record series or based on a governmental entity's review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.
- (8) "Elected official" means each person elected to a state office, county office, municipal office, school board or school district office, special district office, or special service district office, but does not include judges.
- (9) "Explosive" means a chemical compound, device, or mixture:
 - (a) commonly used or intended for the purpose of producing an explosion; and
 - (b) that contains oxidizing or combustive units or other ingredients in proportions, quantities, or packing so that:
 - (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases; and
 - (ii) the resultant gaseous pressures are capable of:
 - (A) producing destructive effects on contiguous objects; or
 - (B) causing death or serious bodily injury.
- (10) "Government audit agency" means any governmental entity that conducts an audit.
- (11)
 - (a) "Governmental entity" means:
 - (i) executive department agencies of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole, the Board of Examiners, the National Guard, the Career Service Review Office, the State Board of Education, the Utah Board of Higher Education, and the State Archives;
 - (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;
 - (iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar administrative units in the judicial branch;
 - (iv) any state-funded institution of higher education or public education; or
 - (v) any political subdivision of the state, but, if a political subdivision has adopted an ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.
 - (b) "Governmental entity" also means:
 - (i) every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection (11)(a) that is funded or established by the government to carry out the public's business;
 - (ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking, except for the Water District Water Development Council created pursuant to Section 11-13-228;
 - (iii) as defined in Section 11-13a-102, a governmental nonprofit corporation;
 - (iv) an association as defined in Section 53G-7-1101;
 - (v) the Utah Independent Redistricting Commission; and

- (vi) a law enforcement agency, as defined in Section 53-1-102, that employs one or more law enforcement officers, as defined in Section 53-13-103.
- (c) "Governmental entity" does not include the Utah Educational Savings Plan created in Section 53B-8a-103.
- (12) "Gross compensation" means every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received from the individual's employer.
- (13) "Individual" means a human being.
- (14)
 - (a) "Initial contact report" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may describe:
 - (i) the date, time, location, and nature of the complaint, the incident, or offense;
 - (ii) names of victims;
 - (iii) the nature or general scope of the agency's initial actions taken in response to the incident;
 - (iv) the general nature of any injuries or estimate of damages sustained in the incident;
 - (v) the name, address, and other identifying information about any person arrested or charged in connection with the incident; or
 - (vi) the identity of the public safety personnel, except undercover personnel, or prosecuting attorney involved in responding to the initial incident.
 - (b) Initial contact reports do not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified in Subsection (14)(a) appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).
 - (c) Initial contact reports do not include accident reports, as that term is described in Title 41, Chapter 6a, Part 4, Accident Responsibilities.
- (15) "Legislative body" means the Legislature.
- (16) "Notice of compliance" means a statement confirming that a governmental entity has complied with an order of the State Records Committee.
- (17) "Person" means:
 - (a) an individual;
 - (b) a nonprofit or profit corporation;
 - (c) a partnership;
 - (d) a sole proprietorship;
 - (e) other type of business organization; or
 - (f) any combination acting in concert with one another.
- (18) "Personal identifying information" means the same as that term is defined in Section 63A-12-100.5.
- (19) "Privacy annotation" means the same as that term is defined in Section 63A-12-100.5.
- (20) "Private provider" means any person who contracts with a governmental entity to provide services directly to the public.
- (21) "Private record" means a record containing data on individuals that is private as provided by Section 63G-2-302.
- (22) "Protected record" means a record that is classified protected as provided by Section 63G-2-305.

- (23) "Public record" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).
- (24) "Reasonable search" means a search that is:
- (a) reasonable in scope and intensity; and
 - (b) not unreasonably burdensome for the government entity.
- (25)
- (a) "Record" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics:
 - (i) that is prepared, owned, received, or retained by a governmental entity or political subdivision; and
 - (ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.
 - (b) "Record" does not include:
 - (i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity:
 - (A) in a capacity other than the employee's or officer's governmental capacity; or
 - (B) that is unrelated to the conduct of the public's business;
 - (ii) a temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the originator is working;
 - (iii) material that is legally owned by an individual in the individual's private capacity;
 - (iv) material to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision;
 - (v) proprietary software;
 - (vi) junk mail or a commercial publication received by a governmental entity or an official or employee of a governmental entity;
 - (vii) a book that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public;
 - (viii) material that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public, regardless of physical form or characteristics of the material;
 - (ix) a daily calendar ;
 - (x) a note prepared by the originator for the originator's own use or for the sole use of an individual for whom the originator is working;
 - (xi) a computer program that is developed or purchased by or for any governmental entity for its own use;
 - (xii) a note or internal memorandum prepared as part of the deliberative process by:
 - (A) a member of the judiciary;
 - (B) an administrative law judge;
 - (C) a member of the Board of Pardons and Parole; or
 - (D) a member of any other body, other than an association or appeals panel as defined in Section 53G-7-1101, charged by law with performing a quasi-judicial function;
 - (xiii) a telephone number or similar code used to access a mobile communication device that is used by an employee or officer of a governmental entity, provided that the employee or officer of the governmental entity has designated at least one business telephone number that is a public record as provided in Section 63G-2-301;
 - (xiv) information provided by the Public Employees' Benefit and Insurance Program, created in Section 49-20-103, to a county to enable the county to calculate the amount to be paid to a health care provider under Subsection 17-50-319(2)(e)(ii);

- (xv) information that an owner of unimproved property provides to a local entity as provided in Section 11-42-205;
- (xvi) a video or audio recording of an interview, or a transcript of the video or audio recording, that is conducted at a Children's Justice Center established under Section 67-5b-102;
- (xvii) child sexual abuse material, as defined by Section 76-5b-103;
- (xviii) before final disposition of an ethics complaint occurs, a video or audio recording of the closed portion of a meeting or hearing of:
 - (A) a Senate or House Ethics Committee;
 - (B) the Independent Legislative Ethics Commission;
 - (C) the Independent Executive Branch Ethics Commission, created in Section 63A-14-202; or
 - (D) the Political Subdivisions Ethics Review Commission established in Section 63A-15-201;
- (xix) confidential communication described in Section 58-60-102, 58-61-102, or 58-61-702;
- (xx) any item described in Subsection (25)(a) that is:
 - (A) described in Subsection 63G-2-305(17), (18), or (23)(b); and
 - (B) shared between any of the following entities:
 - (I) the Division of Risk Management;
 - (II) the Office of the Attorney General;
 - (III) the governor's office; or
 - (IV) the Legislature; or
- (xxi) the email address that a candidate for elective office provides to a filing officer under Subsection 20A-9-201(5)(c)(ii) or 20A-9-203(4)(c)(iv).
- (26) "Record series" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.
- (27) "Records officer" means the individual appointed by the chief administrative officer of each governmental entity, or the political subdivision to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.
- (28) "Schedule," "scheduling," and their derivative forms mean the process of specifying the length of time each record series should be retained by a governmental entity for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.
- (29) "Sponsored research" means research, training, and other sponsored activities as defined by the federal Executive Office of the President, Office of Management and Budget:
 - (a) conducted:
 - (i) by an institution within the state system of higher education defined in Section 53B-1-102; and
 - (ii) through an office responsible for sponsored projects or programs; and
 - (b) funded or otherwise supported by an external:
 - (i) person that is not created or controlled by the institution within the state system of higher education; or
 - (ii) federal, state, or local governmental entity.
- (30) "State archives" means the Division of Archives and Records Service created in Section 63A-12-101.
- (31) "State archivist" means the director of the state archives.
- (32) "State Records Committee" means the State Records Committee created in Section 63G-2-501.
- (33) "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

Amended by Chapter 18, 2024 General Session
Amended by Chapter 465, 2024 General Session
Amended by Chapter 509, 2024 General Session
Amended by Chapter 522, 2024 General Session

63G-2-104 Administrative Procedures Act not applicable.

Title 63G, Chapter 4, Administrative Procedures Act, does not apply to this chapter except as provided in Section 63G-2-603.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-105 Confidentiality agreements.

If a governmental entity or political subdivision receives a request for a record that is subject to a confidentiality agreement executed before April 1, 1992, the law in effect at the time the agreement was executed, including late judicial interpretations of the law, shall govern access to the record, unless all parties to the confidentiality agreement agree in writing to be governed by the provisions of this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-106 Records of security measures.

- (1) The records of a governmental entity or political subdivision regarding security measures designed for the protection of persons or property, public or private, are not subject to this chapter.
- (2) The records described in Subsection (1) include:
 - (a) security plans, including a plan:
 - (i) to prepare for or mitigate terrorist activity; or
 - (ii) for emergency and disaster response and recovery;
 - (b) security codes and combinations, and passwords;
 - (c) passes and keys;
 - (d) security procedures;
 - (e) except as provided in Subsection (3), results of, or data collected from, a public entity's risk assessment or security audit; and
 - (f) building and public works designs, to the extent that the records or information relate to the ongoing security measures of a public entity.
- (3) The records described in Subsection (1) do not include a certification that a community water system has conducted a risk and resilience assessment under 42 U.S.C. Sec. 300i-2.

Amended by Chapter 109, 2022 General Session

63G-2-107 Disclosure of records subject to federal law or other provisions of state law.

- (1)
 - (a) The disclosure of a record to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including a record for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule, or regulation.

- (b) Except as provided in Subsections (2) and (3), this chapter applies to records described in Subsection (1)(a) to the extent that this chapter is not inconsistent with the statute, rule, or regulation.
- (2) Except as provided in Subsection (4), this chapter does not apply to a record containing protected health information as defined in 45 C.F.R., Part 164, Standards for Privacy of Individually Identifiable Health Information, if the record is:
 - (a) controlled or maintained by a governmental entity; and
 - (b) governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information.
- (3) The disclosure of an education record as defined in the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99, that is controlled or maintained by a governmental entity is governed by the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99.
- (4) This section does not exempt any record or record series from the provisions of Subsection 63G-2-601(1).

Amended by Chapter 18, 2024 General Session
Amended by Chapter 381, 2024 General Session

63G-2-108 Certification of records officer.

Each records officer of a governmental entity or political subdivision shall, on an annual basis, successfully complete online training and obtain certification from state archives in accordance with Section 63A-12-110.

Enacted by Chapter 377, 2012 General Session

**Part 2
Access to Records**

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

- (1)
 - (a) Except as provided in Subsection (1)(b), a person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to Sections 63G-2-203 and 63G-2-204.
 - (b) A right under Subsection (1)(a) does not apply with respect to a record:
 - (i) a copy of which the governmental entity has already provided to the person;
 - (ii) that is the subject of a records request that the governmental entity is not required to fill under Subsection (7)(a)(v); or
 - (iii)
 - (A) that is accessible only by a computer or other electronic device owned or controlled by the governmental entity;
 - (B) that is part of an electronic file that also contains a record that is private, controlled, or protected; and

- (C) that the governmental entity cannot readily segregate from the part of the electronic file that contains a private, controlled, or protected record.
- (2) A record is public unless otherwise expressly provided by statute.
- (3) The following records are not public:
 - (a) a record that is private, controlled, or protected under Sections 63G-2-302, 63G-2-303, 63G-2-304, and 63G-2-305; and
 - (b) a record to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.
- (4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or 63G-2-305 may be classified private, controlled, or protected.
- (5)
 - (a) A governmental entity may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section 63G-2-202, 63G-2-206, or 63G-2-303.
 - (b) A governmental entity may disclose a record that is private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee, determines that:
 - (i) there is no interest in restricting access to the record; or
 - (ii) the interests favoring access are greater than or equal to the interest favoring restriction of access.
 - (c) In addition to the disclosure under Subsection (5)(b), a governmental entity may disclose a record that is protected under Subsection 63G-2-305(51) if:
 - (i) the head of the governmental entity, or a designee, determines that the disclosure:
 - (A) is mutually beneficial to:
 - (I) the subject of the record;
 - (II) the governmental entity; and
 - (III) the public; and
 - (B) serves a public purpose related to:
 - (I) public safety; or
 - (II) consumer protection; and
 - (ii) the person who receives the record from the governmental entity agrees not to use or allow the use of the record for advertising or solicitation purposes.
- (6) A governmental entity shall provide a person with a certified copy of a record if:
 - (a) the person requesting the record has a right to inspect it;
 - (b) the person identifies the record with reasonable specificity; and
 - (c) the person pays the lawful fees.
- (7)
 - (a) In response to a request, a governmental entity is not required to:
 - (i) create a record;
 - (ii) compile, format, manipulate, package, summarize, or tailor information;
 - (iii) provide a record in a particular format, medium, or program not currently maintained by the governmental entity;
 - (iv) fulfill a person's records request if the request unreasonably duplicates prior records requests from that person;
 - (v) fill a person's records request if:
 - (A) the record requested is:
 - (I) publicly accessible online; or

- (II) included in a public publication or product produced by the governmental entity receiving the request; and
 - (B) the governmental entity:
 - (I) specifies to the person requesting the record where the record is accessible online; or
 - (II) provides the person requesting the record with the public publication or product and specifies where the record can be found in the public publication or product; or
 - (vi) fulfill a person's records request if:
 - (A) the person has been determined under Section 63G-2-209 to be a vexatious requester;
 - (B) the State Records Committee order determining the person to be a vexatious requester provides that the governmental entity is not required to fulfill a request from the person for a period of time; and
 - (C) the period of time described in Subsection (7)(a)(vi)(B) has not expired.
 - (b) A governmental entity shall conduct a reasonable search for a requested record.
- (8)
- (a) Although not required to do so, a governmental entity may, upon request from the person who submitted the records request, compile, format, manipulate, package, summarize, or tailor information or provide a record in a format, medium, or program not currently maintained by the governmental entity.
 - (b) In determining whether to fulfill a request described in Subsection (8)(a), a governmental entity may consider whether the governmental entity is able to fulfill the request without unreasonably interfering with the governmental entity's duties and responsibilities.
 - (c) A governmental entity may require a person who makes a request under Subsection (8)(a) to pay the governmental entity, in accordance with Section 63G-2-203, for providing the information or record as requested.
- (9)
- (a) Notwithstanding any other provision of this chapter, and subject to Subsection (9)(b), a governmental entity is not required to respond to, or provide a record in response to, a record request if the request is submitted by or in behalf of an individual who is confined in a jail or other correctional facility following the individual's conviction.
 - (b) Subsection (9)(a) does not apply to:
 - (i) the first five record requests submitted to the governmental entity by or in behalf of an individual described in Subsection (9)(a) during any calendar year requesting only a record that contains a specific reference to the individual; or
 - (ii) a record request that is submitted by an attorney of an individual described in Subsection (9)(a).
- (10)
- (a) A governmental entity may allow a person requesting more than 50 pages of records to copy the records if:
 - (i) the records are contained in files that do not contain records that are exempt from disclosure, or the records may be segregated to remove private, protected, or controlled information from disclosure; and
 - (ii) the governmental entity provides reasonable safeguards to protect the public from the potential for loss of a public record.
 - (b) If the requirements of Subsection (10)(a) are met, the governmental entity may:
 - (i) provide the requester with the facilities for copying the requested records and require that the requester make the copies; or
 - (ii) allow the requester to provide the requester's own copying facilities and personnel to make the copies at the governmental entity's offices and waive the fees for copying the records.

- (11)
 - (a) A governmental entity that owns an intellectual property right and that offers the intellectual property right for sale or license may control by ordinance or policy the duplication and distribution of the material based on terms the governmental entity considers to be in the public interest.
 - (b) Nothing in this chapter shall be construed to limit or impair the rights or protections granted to the governmental entity under federal copyright or patent law as a result of its ownership of the intellectual property right.
- (12) A governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and receive a copy of a record under this chapter.
- (13) Subject to the requirements of Subsection (7), a governmental entity shall provide access to an electronic copy of a record in lieu of providing access to its paper equivalent if:
 - (a) the person making the request requests or states a preference for an electronic copy;
 - (b) the governmental entity currently maintains the record in an electronic format that is reproducible and may be provided without reformatting or conversion; and
 - (c) the electronic copy of the record:
 - (i) does not disclose other records that are exempt from disclosure; or
 - (ii) may be segregated to protect private, protected, or controlled information from disclosure without the undue expenditure of public resources or funds.
- (14) In determining whether a record is properly classified as private under Subsection 63G-2-302(2)(d), the governmental entity, State Records Committee, local appeals board, or court shall consider and weigh:
 - (a) any personal privacy interests, including those in images, that would be affected by disclosure of the records in question; and
 - (b) any public interests served by disclosure.

Amended by Chapter 173, 2023 General Session

Amended by Chapter 516, 2023 General Session

63G-2-202 Access to private, controlled, and protected documents.

- (1) Except as provided in Subsection (11)(a), a governmental entity:
 - (a) shall, upon request, disclose a private record to:
 - (i) the subject of the record;
 - (ii) the parent or legal guardian of an unemancipated minor who is the subject of the record;
 - (iii) the legal guardian of a legally incapacitated individual who is the subject of the record;
 - (iv) any other individual who:
 - (A) has a power of attorney from the subject of the record;
 - (B) submits a notarized release from the subject of the record or the individual's legal representative dated no more than 90 days before the date the request is made; or
 - (C) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a health care provider, as defined in Section 26B-8-501, if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or
 - (v) any person to whom the record must be provided pursuant to:
 - (A) court order as provided in Subsection (7); or
 - (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers;
- and

- (b) may disclose a private record described in Subsections 63G-2-302(1)(j) through (m), without complying with Section 63G-2-206, to another governmental entity for a purpose related to:
 - (i) voter registration; or
 - (ii) the administration of an election.
- (2)
 - (a) Upon request, a governmental entity shall disclose a controlled record to:
 - (i) a physician, physician assistant, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of:
 - (A) a release from the subject of the record that is dated no more than 90 days prior to the date the request is made; and
 - (B) a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and
 - (ii) any person to whom the record must be disclosed pursuant to:
 - (A) a court order as provided in Subsection (7); or
 - (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers.
 - (b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.
- (3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.
- (4) Upon request, and except as provided in Subsection (11)(b), a governmental entity shall disclose a protected record to:
 - (a) the person that submitted the record;
 - (b) any other individual who:
 - (i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or
 - (ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;
 - (c) any person to whom the record must be provided pursuant to:
 - (i) a court order as provided in Subsection (7); or
 - (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers; or
 - (d) the owner of a mobile home park, subject to the conditions of Subsection 41-1a-116(5).
- (5) Except as provided in Subsection (1)(b), a governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, state, the United States, or a foreign government only as provided by Section 63G-2-206.
- (6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.
- (7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:
 - (a) the record deals with a matter in controversy over which the court has jurisdiction;
 - (b) the court has considered the merits of the request for access to the record;
 - (c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect:
 - (i) privacy interests in the case of private or controlled records;
 - (ii) business confidentiality interests in the case of records protected under Subsection 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

- (iii) privacy interests or the public interest in the case of other protected records;
 - (d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, are greater than or equal to the interests favoring restriction of access; and
 - (e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.
- (8)
- (a) Except as provided in Subsection (8)(d), a governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:
 - (i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;
 - (ii) determines that:
 - (A) the proposed research is bona fide; and
 - (B) the value of the research is greater than or equal to the infringement upon personal privacy;
 - (iii)
 - (A) requires the researcher to assure the integrity, confidentiality, and security of the records; and
 - (B) requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;
 - (iv) prohibits the researcher from:
 - (A) disclosing the record in individually identifiable form, except as provided in Subsection (8)(b); or
 - (B) using the record for purposes other than the research approved by the governmental entity; and
 - (v) secures from the researcher a written statement of the researcher's understanding of and agreement to the conditions of this Subsection (8) and the researcher's understanding that violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution under Section 63G-2-801.
 - (b) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.
 - (c) A governmental entity may require indemnification as a condition of permitting research under this Subsection (8).
 - (d) A governmental entity may not disclose or authorize disclosure of a private record for research purposes as described in this Subsection (8) if the private record is a record described in Subsection 63G-2-302(1)(w).
- (9)
- (a) Under Subsections 63G-2-201(5)(b) and 63G-2-401(6), a governmental entity may disclose to persons other than those specified in this section records that are:
 - (i) private under Section 63G-2-302; or
 - (ii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.
 - (b) Under Subsection 63G-2-403(11)(b), the State Records Committee may require the disclosure to persons other than those specified in this section of records that are:
 - (i) private under Section 63G-2-302;
 - (ii) controlled under Section 63G-2-304; or

- (iii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.
 - (c) Under Subsection 63G-2-404(7), the court may require the disclosure of records that are private under Section 63G-2-302, controlled under Section 63G-2-304, or protected under Section 63G-2-305 to persons other than those specified in this section.
- (10)
- (a) A private record described in Subsection 63G-2-302(2)(f) may only be disclosed as provided in Subsection (1)(a)(v).
 - (b) A protected record described in Subsection 63G-2-305(43) may only be disclosed as provided in Subsection (4)(c) or Section 26B-6-212.
- (11)
- (a) A private, protected, or controlled record described in Section 26B-1-506 shall be disclosed as required under:
 - (i) Subsections 26B-1-506(1)(b) and (2); and
 - (ii) Subsections 26B-1-507(1) and (6).
 - (b) A record disclosed under Subsection (11)(a) shall retain its character as private, protected, or controlled.

Amended by Chapter 288, 2024 General Session

63G-2-203 Fees.

- (1)
- (a) Subject to Subsection (5), a governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of providing a record.
 - (b) A fee under Subsection (1)(a) shall be approved by the governmental entity's executive officer.
- (2)
- (a) When a governmental entity compiles a record in a form other than that normally maintained by the governmental entity, the actual costs under this section may include the following:
 - (i) the cost of staff time for compiling, formatting, manipulating, packaging, summarizing, or tailoring the record either into an organization or media to meet the person's request;
 - (ii) the cost of staff time for search, retrieval, and other direct administrative costs for complying with a request; and
 - (iii) in the case of fees for a record that is the result of computer output other than word processing, the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with formatting or interfacing the information for particular users, and the administrative costs as set forth in Subsections (2)(a)(i) and (ii).
 - (b) An hourly charge under Subsection (2)(a) may not exceed the salary of the lowest paid employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request.
- (3)
- (a) Fees shall be established as provided in this Subsection (3).
 - (b) A governmental entity with fees established by the Legislature:
 - (i) shall establish the fees defined in Subsection (2), or other actual costs associated with this section through the budget process; and
 - (ii) may use the procedures of Section 63J-1-504 to set fees until the Legislature establishes fees through the budget process.

- (c) Political subdivisions shall establish fees by ordinance or written formal policy adopted by the governing body.
- (d) The judiciary shall establish fees by rules of the judicial council.
- (4) A governmental entity may fulfill a record request without charge and is encouraged to do so if it determines that:
 - (a) releasing the record primarily benefits the public rather than a person;
 - (b) the individual requesting the record is the subject of the record, or an individual specified in Subsection 63G-2-202(1) or (2); or
 - (c) the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.
- (5)
 - (a) As used in this Subsection (5), "media representative":
 - (i) means a person who requests a record to obtain information for a story or report for publication or broadcast to the general public; and
 - (ii) does not include a person who requests a record to obtain information for a blog, podcast, social media account, or other means of mass communication generally available to a member of the public.
 - (b) A governmental entity may not charge a fee for:
 - (i) reviewing a record to determine whether it is subject to disclosure, except as permitted by Subsection (2)(a)(ii);
 - (ii) inspecting a record; or
 - (iii) the first quarter hour of staff time spent in responding to a request under Section 63G-2-204.
 - (c) Notwithstanding Subsection (5)(b)(iii), a governmental entity is not prevented from charging a fee for the first quarter hour of staff time spent in responding to a request under Section 63G-2-204 if the person who submits the request:
 - (i) is not a Utah media representative; and
 - (ii) previously submitted a separate request within the 10-day period immediately before the date of the request to which the governmental entity is responding.
- (6)
 - (a) A person who believes that there has been an unreasonable denial of a fee waiver under Subsection (4) may appeal the denial in the same manner as a person appeals when inspection of a public record is denied under Section 63G-2-205.
 - (b) The adjudicative body hearing the appeal:
 - (i) shall review the fee waiver de novo, but shall review and consider the governmental entity's denial of the fee waiver and any determination under Subsection (4); and
 - (ii) has the same authority when a fee waiver or reduction is denied as it has when the inspection of a public record is denied.
- (7)
 - (a) All fees received under this section by a governmental entity subject to Subsection (3)(b) shall be retained by the governmental entity as a dedicated credit.
 - (b) Those funds shall be used to recover the actual cost and expenses incurred by the governmental entity in providing the requested record or record series.
- (8)
 - (a) A governmental entity may require payment of past fees and future estimated fees before beginning to process a request if:
 - (i) fees are expected to exceed \$50; or
 - (ii) the requester has not paid fees from previous requests.

- (b) Any prepaid amount in excess of fees due shall be returned to the requester.
- (9) This section does not alter, repeal, or reduce fees established by other statutes or legislative acts.
- (10)
 - (a) Notwithstanding Subsection (3)(c), fees for voter registration records shall be set as provided in this Subsection (10).
 - (b) The lieutenant governor shall:
 - (i) after consultation with county clerks, establish uniform fees for voter registration and voter history records that meet the requirements of this section; and
 - (ii) obtain legislative approval of those fees by following the procedures and requirements of Section 63J-1-504.

Amended by Chapter 128, 2022 General Session

63G-2-204 Record request -- Response -- Time for responding.

- (1)
 - (a) A person making a request for a record shall submit to the governmental entity that retains the record a written request containing:
 - (i) the person's:
 - (A) name;
 - (B) mailing address;
 - (C) email address, if the person has an email address and is willing to accept communications by email relating to the person's records request; and
 - (D) daytime telephone number; and
 - (ii) a description of the record requested that identifies the record with reasonable specificity.
 - (b)
 - (i) A single record request may not be submitted to multiple governmental entities.
 - (ii) Subsection (1)(b)(i) may not be construed to prevent a person from submitting a separate record request to each of multiple governmental entities, even if each of the separate requests seeks access to the same record.
- (2)
 - (a) In response to a request for a record, a governmental entity may not provide a record that it has received under Section 63G-2-206 as a shared record.
 - (b) If a governmental entity is prohibited from providing a record under Subsection (2)(a), the governmental entity shall:
 - (i) deny the records request; and
 - (ii) inform the person making the request of the identity of the governmental entity from which the shared record was received.
- (3) A governmental entity may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall be directed.
- (4) After receiving a request for a record, a governmental entity shall:
 - (a) review each request that seeks an expedited response and notify, within five business days after receiving the request, each requester that has not demonstrated that their record request benefits the public rather than the person that their response will not be expedited; and

- (b) as soon as reasonably possible, but no later than 10 business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person:
 - (i) approve the request and provide a copy of the record;
 - (ii) deny the request in accordance with the procedures and requirements of Section 63G-2-205;
 - (iii) notify the requester that it does not maintain the record requested and provide, if known, the name and address of the governmental entity that does maintain the record; or
 - (iv) notify the requester that because of one of the extraordinary circumstances listed in Subsection (6), it cannot immediately approve or deny the request, and include with the notice:
 - (A) a description of the circumstances that constitute the extraordinary circumstances; and
 - (B) the date when the records will be available, consistent with the requirements of Subsection (7).
- (5) Any person who requests a record to obtain information for a story or report for publication or broadcast to the general public is presumed to be acting to benefit the public rather than a person.
- (6) The following circumstances constitute "extraordinary circumstances" that allow a governmental entity to delay approval or denial by an additional period of time as specified in Subsection (7) if the governmental entity determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection (4):
 - (a) another governmental entity is using the record, in which case the originating governmental entity shall promptly request that the governmental entity currently in possession return the record;
 - (b) another governmental entity is using the record as part of an audit, and returning the record before the completion of the audit would impair the conduct of the audit;
 - (c)
 - (i) the request is for a voluminous quantity of records or a record series containing a substantial number of records; or
 - (ii) the requester seeks a substantial number of records or records series in requests filed within five working days of each other;
 - (d) the governmental entity is currently processing a large number of records requests;
 - (e) the request requires the governmental entity to review a large number of records to locate the records requested;
 - (f) the decision to release a record involves legal issues that require the governmental entity to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case law;
 - (g) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires extensive editing; or
 - (h) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires computer programming.
- (7) If one of the extraordinary circumstances listed in Subsection (6) precludes approval or denial within the time specified in Subsection (4), the following time limits apply to the extraordinary circumstances:
 - (a) for claims under Subsection (6)(a), the governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work;
 - (b) for claims under Subsection (6)(b), the originating governmental entity shall notify the requester when the record is available for inspection and copying;

- (c) for claims under Subsections (6)(c), (d), and (e), the governmental entity shall:
 - (i) disclose the records that it has located which the requester is entitled to inspect;
 - (ii) provide the requester with an estimate of the amount of time it will take to finish the work required to respond to the request;
 - (iii) complete the work and disclose those records that the requester is entitled to inspect as soon as reasonably possible; and
 - (iv) for any person that does not establish a right to an expedited response as authorized by Subsection (4), a governmental entity may choose to:
 - (A) require the person to provide for copying of the records as provided in Subsection 63G-2-201(10); or
 - (B) treat a request for multiple records as separate record requests, and respond sequentially to each request;
 - (d) for claims under Subsection (6)(f), the governmental entity shall either approve or deny the request within five business days after the response time specified for the original request has expired;
 - (e) for claims under Subsection (6)(g), the governmental entity shall fulfill the request within 15 business days from the date of the original request; or
 - (f) for claims under Subsection (6)(h), the governmental entity shall complete its programming and disclose the requested records as soon as reasonably possible.
- (8)
- (a) If a request for access is submitted to an office of a governmental entity other than that specified by rule in accordance with Subsection (3), the office shall promptly forward the request to the appropriate office.
 - (b) If the request is forwarded promptly, the time limit for response begins when the request is received by the office specified by rule.
- (9) If the governmental entity fails to provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination denying access to the record.

Amended by Chapter 173, 2023 General Session

63G-2-205 Denials.

- (1) If the governmental entity denies the request in whole or part, it shall provide a notice of denial to the requester either in person or by sending the notice to the requester's address.
- (2) The notice of denial shall contain the following information:
 - (a) a description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);
 - (b) citations to the provisions of this chapter, court rule or order, another state statute, federal statute, or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);
 - (c) a statement that the requester has the right to appeal the denial to the chief administrative officer of the governmental entity; and
 - (d) the time limits for filing an appeal, and the name and business address of the chief administrative officer of the governmental entity.

- (3) Unless otherwise required by a court or agency of competent jurisdiction, a governmental entity may not destroy or give up custody of any record to which access was denied until the period for an appeal has expired or the end of the appeals process, including judicial appeal.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-206 Sharing records.

- (1) A governmental entity may provide a record that is private, controlled, or protected to another governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity:
 - (a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;
 - (b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;
 - (c) is authorized by state statute to conduct an audit and the record is needed for that purpose;
 - (d) is one that collects information for presentence, probationary, or parole purposes; or
 - (e)
 - (i) is:
 - (A) the Legislature;
 - (B) a legislative committee;
 - (C) a member of the Legislature; or
 - (D) a legislative staff member acting at the request of the Legislature, a legislative committee, or a member of the Legislature; and
 - (ii) requests the record in relation to the Legislature's duties including:
 - (A) the preparation or review of a legislative proposal or legislation;
 - (B) appropriations; or
 - (C) an investigation or review conducted by the Legislature or a legislative committee.
- (2)
 - (a) A governmental entity may provide a private, controlled, or protected record or record series to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity provides written assurance:
 - (i) that the record or record series is necessary to the performance of the governmental entity's duties and functions;
 - (ii) that the record or record series will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and
 - (iii) that the use of the record or record series produces a public benefit that is greater than or equal to the individual privacy right that protects the record or record series.
 - (b) A governmental entity may provide a private, controlled, or protected record or record series to a contractor or a private provider according to the requirements of Subsection (6)(b).
- (3)
 - (a) A governmental entity shall provide a private, controlled, or protected record to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity:
 - (i) is entitled by law to inspect the record;
 - (ii) is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds; or
 - (iii) is an entity described in Subsection (1)(a), (b), (c), (d), or (e).

- (b) Subsection (3)(a)(iii) applies only if the record is a record described in Subsection 63G-2-305(4).
- (4) Before disclosing a record or record series under this section to another governmental entity, another state, the United States, a foreign government, or to a contractor or private provider, the originating governmental entity shall:
 - (a) inform the recipient of the record's classification and the accompanying restrictions on access; and
 - (b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.
- (5) A governmental entity may disclose a record to another state, the United States, or a foreign government for the reasons listed in Subsections (1) and (2) without complying with the procedures of Subsection (2) or (4) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.
- (6)
 - (a) Subject to Subsections (6)(b) and (c), an entity receiving a record under this section is subject to the same restrictions on disclosure of the record as the originating entity.
 - (b) A contractor or a private provider may receive information under this section only if:
 - (i) the contractor or private provider's use of the record or record series produces a public benefit that is greater than or equal to the individual privacy right that protects the record or record series;
 - (ii) the record or record series it requests:
 - (A) is necessary for the performance of a contract with a governmental entity;
 - (B) will only be used for the performance of the contract with the governmental entity;
 - (C) will not be disclosed to any other person; and
 - (D) will not be used for advertising or solicitation purposes; and
 - (iii) the contractor or private provider gives written assurance to the governmental entity that is providing the record or record series that it will adhere to the restrictions of this Subsection (6)(b).
 - (c) The classification of a record already held by a governmental entity and the applicable restrictions on disclosure of that record are not affected by the governmental entity's receipt under this section of a record with a different classification that contains information that is also included in the previously held record.
- (7) Notwithstanding any other provision of this section, if a more specific court rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing information, that rule, order, statute, or federal regulation controls.
- (8)
 - (a) The following records may not be shared under this section:
 - (i) records held by the Division of Oil, Gas, and Mining that pertain to any person and that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining;
 - (ii) except as provided in Subsection (8)(b), records of publicly funded libraries as described in Subsection 63G-2-302(1)(c); and
 - (iii) a record described in Section 63G-12-210.
 - (b) A publicly funded library may share a record that is a private record under Subsection 63G-2-302(1)(c) with a law enforcement agency, as defined in Section 53-1-102, if:
 - (i) the record is a video surveillance recording of the library premises; and
 - (ii) the law enforcement agency certifies in writing that:

- (A) the law enforcement agency believes that the record will provide important information for a pending investigation into criminal or potentially criminal behavior; and
 - (B) the law enforcement agency's receipt of the record will assist the agency to prevent imminent harm to an individual or imminent and substantial damage to property.
- (9) Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.

Amended by Chapter 334, 2019 General Session

63G-2-207 Subpoenas -- Court ordered disclosure for discovery.

- (1) Subpoenas and other methods of discovery under the state or federal statutes or rules of civil, criminal, administrative, or legislative procedure are not written requests under Section 63G-2-204.
- (2)
- (a)
 - (i) Except as otherwise provided in Subsection (2)(c), in judicial or administrative proceedings in which an individual is requesting discovery of records classified private, controlled, or protected under this chapter, or otherwise restricted from access by other statutes, the court, or an administrative law judge shall follow the procedure in Subsection 63G-2-202(7) before ordering disclosure.
 - (ii) Until the court or an administrative law judge orders disclosure, these records are privileged from discovery.
 - (b) If, the court or administrative order requires disclosure, the terms of the order may limit the requester's further use and disclosure of the record in accordance with Subsection 63G-2-202(7), in order to protect the privacy interests recognized in this chapter.
 - (c) Unless a court or administrative law judge imposes limitations in a restrictive order, this section does not limit the right to obtain:
 - (i) records through the procedures set forth in this chapter; or
 - (ii) medical records discoverable under state or federal court rules as authorized by Subsection 63G-2-302(3).

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-208 Public repository of legislative email.

- (1) As used in this section, "repository" means the repository of email described in Subsection (2).
- (2)
- (a) On or before January 1, 2014, the Legislature shall post on its website a publicly accessible repository containing email that legislators transfer to it as provided in this section.
 - (b) The repository shall be searchable by sender, receiver, and subject.
- (3) A legislator may transfer to the repository an email that the legislator sent or received.
- (4) An email in the repository may be removed from the repository if:
- (a) the email was accidentally transferred to the repository;
 - (b) it is determined that the email is not a record or that the email is a private, protected, or controlled record;
 - (c) the email is deleted pursuant to the Legislature's record retention policy; or
 - (d) for an email that is not removed from the repository earlier under Subsection (4)(a), (b), or (c), at least two years have passed after the day the legislator first sent or received the email.

- (5) A legislator's failure to transfer an email to the repository does not alone mean that the email is a private, protected, or controlled record.

Enacted by Chapter 231, 2013 General Session

63G-2-209 Vexatious requester.

(1) As used in this section:

- (a) "Committee" means the State Records Committee created in Section 63G-2-501.
- (b) "Executive secretary" means an individual appointed as executive secretary under Subsection 63G-2-502(3).
- (c) "Respondent" means a person that a governmental entity claims is a vexatious requester under this section.

(2)

- (a) A governmental entity may file a petition with the committee to request relief from a person that the governmental entity claims is a vexatious requester.
- (b) A petition under Subsection (2)(a) shall:
 - (i) be filed with the committee by submitting the petition to the executive secretary; and
 - (ii) contain:
 - (A) the name, phone number, mailing address, and email address that the respondent submitted to the governmental entity;
 - (B) a description of the conduct that the governmental entity claims demonstrates that the respondent is a vexatious requester;
 - (C) a statement of the relief the governmental entity seeks; and
 - (D) a sworn declaration or an unsworn declaration, as those terms are defined in Section 78B-18a-102.
- (c) On the day the governmental entity files a petition under Subsection (2)(a), the governmental entity shall send a copy of the petition to the respondent.

(3)

- (a) Except as provided in Subsection (3)(c), no later than seven business days after receiving the petition the executive secretary shall schedule a hearing for the committee to consider the petition, to be held:
 - (i)
 - (A) at the next regularly scheduled committee meeting falling at least 16 calendar days after the date the petition is filed but no later than 64 calendar days after the date the petition is filed; or
 - (B) at a regularly scheduled committee meeting that is later than the period described in Subsection (3)(a)(i)(A) if the later committee meeting is the first regularly scheduled committee meeting at which there are fewer than 10 appeals scheduled to be heard; or
 - (ii) at a date sooner than a period described in Subsection (3)(a)(i) if the governmental entity:
 - (A) requests an expedited hearing; and
 - (B) shows good cause for the expedited hearing.
- (b) If the executive secretary schedules a hearing under Subsection (3)(a), the executive secretary shall:
 - (i) send a copy of the petition to each member of the committee;
 - (ii) send a copy of the notice of hearing to the governmental entity, the respondent, and each member of the committee; and
 - (iii) if applicable, send a copy of the respondent's statement under Subsection (3)(c)(ii) to the governmental entity and each member of the committee.

- (c)
 - (i) The executive secretary may decline to schedule a hearing if:
 - (A) the executive secretary recommends that the committee deny the petition without a hearing because the petition does not warrant a hearing;
 - (B) the executive secretary consults with the chair of the committee and at least one other member of the committee; and
 - (C) the chair of the committee and all committee members with whom the executive secretary consults under this Subsection (3)(c)(i) agree with the executive secretary's recommendation to deny the petition without a hearing.
 - (ii) The executive secretary may, in making the determination described in Subsection (3)(c)(i) (A), request that the respondent submit a written response to the petition.
- (d) If the executive secretary declines to schedule a hearing in accordance with Subsection (3)(c):
 - (i) the executive secretary shall send a notice to the governmental entity and the respondent indicating that the request for a hearing has been denied and the reasons for the denial; and
 - (ii) the committee shall:
 - (A) vote at the committee's next regular meeting to accept or reject the recommendation to deny the petition without a hearing;
 - (B) issue an order that includes the reasons for the committee's decision to accept or reject the recommendation; and
 - (C) if the committee rejects the recommendation to deny the petition without a hearing, direct the executive secretary to schedule a hearing as provided in Subsection (3)(a).
- (4)
 - (a) No later than five business days before the hearing, the respondent may submit to the executive secretary and the governmental entity a written statement in response to the governmental entity's petition.
 - (b) The written statement described in Subsection (4)(a) may be the same document as the respondent's written response described in Subsection (3)(c)(ii).
- (5) No later than 10 business days before a hearing under this section, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention with the committee as provided in Subsection 63G-2-403(6).
- (6) If a respondent fails to submit a written statement under Subsection (4) or fails to appear at the hearing, the committee shall:
 - (a) cancel the hearing; or
 - (b) hold the hearing in accordance with Subsection (7).
- (7)
 - (a) If the committee holds a hearing scheduled under Subsection (3), the committee shall:
 - (i) allow the governmental entity to testify, present evidence, and comment on the issues; and
 - (ii) allow the respondent to testify, present evidence, and comment on the issues if the respondent appears at the hearing.
 - (b) At the hearing, the committee may allow another interested person to comment on the issues.
- (c)
 - (i) Discovery is prohibited, but the committee may issue subpoenas or other orders to compel production of necessary testimony or evidence.
 - (ii) If the subject of a committee subpoena disobeys or fails to comply with the subpoena, the committee may file a motion with the district court for an order to compel obedience to the subpoena.
- (8)

- (a) No later than seven business days after a hearing is held as scheduled under Subsection (3) or the date on which a hearing cancelled under Subsection (6) was scheduled to be held, the committee shall:
 - (i) determine, in accordance with Subsection (9), whether the governmental entity has demonstrated that the respondent is a vexatious requester; and
 - (ii) issue a signed order that grants or denies the petition in whole or in part.
- (b) Upon granting the petition in whole or in part, the committee may order that the governmental entity is not required to fulfill requests from the respondent or a person that submits a request on the respondent's behalf for a period of time that may not exceed one year.
- (c) The committee's order shall contain:
 - (i) a statement of the reasons for the committee's decision;
 - (ii) if the petition is granted in whole or in part, a specific description of the conduct the committee determines demonstrates that the respondent is a vexatious requester, including any conduct the committee finds to constitute an abuse of the right of access to information under this chapter or a substantial interference with the operations of the governmental entity;
 - (iii) a statement that the respondent or governmental entity may seek judicial review of the committee's decision in district court as provided in Section 63G-2-404; and
 - (iv) a brief summary of the judicial review process, the time limits for seeking judicial review, and a notice that, in order to protect applicable rights in connection with the judicial review, the person seeking judicial review of the committee's decision may wish to seek advice from an attorney.
- (9) In determining whether a governmental entity has demonstrated that the respondent is a vexatious requester, the committee shall consider:
 - (a) the interests described in Section 63G-2-102;
 - (b) as applicable:
 - (i) the number of requests the respondent has submitted to the governmental entity, including the number of pending record requests;
 - (ii) the scope, nature, content, language, and subject matter of record requests the respondent has submitted to the governmental entity;
 - (iii) the nature, content, language, and subject matter of any communications to the governmental entity related to a record request of the respondent; and
 - (iv) any pattern of conduct that the committee determines to constitute:
 - (A) an abuse of the right of access to information under this chapter; or
 - (B) substantial interference with the operations of the governmental entity; and
 - (c) any other factor the committee considers relevant.
- (10)
 - (a) A governmental entity or respondent aggrieved by the committee's decision under this section may seek judicial review of the decision as provided in Section 63G-2-404.
 - (b) In a judicial review under Subsection (10)(a), the court may award reasonable attorney fees to a respondent if:
 - (i) the respondent substantially prevails; and
 - (ii) the court determines that:
 - (A) the petition filed by the governmental entity under Subsection (2) is without merit; and
 - (B) the governmental entity's actions in filing the petition lack a reasonable basis in fact or law.
 - (c) Except for the waiver of immunity in Subsection 63G-7-301(2)(e), a claim for attorney fees under this Subsection (10) is not subject to Chapter 7, Governmental Immunity Act of Utah.

- (11) Notwithstanding any other provision of this chapter, a records request that a governmental entity is not required to fulfill in accordance with an order issued under this section may not be the subject of an appeal under Part 4, Appeals.
- (12) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the committee shall make rules to implement this section.

Enacted by Chapter 516, 2023 General Session

Part 3 Classification

63G-2-301 Public records.

- (1) As used in this section:
 - (a) "Business address" means a single address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.
 - (b) "Business email address" means a single email address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.
 - (c) "Business telephone number" means a single telephone number of a governmental agency designated for the public to contact an employee or officer of the governmental agency.
 - (d) "Correctional facility" means the same as that term is defined in Section 77-16b-102.
- (2) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63G-2-201(3)(b) and (6)(a):
 - (a) laws;
 - (b) the name, gender, gross compensation, job title, job description, business address, business email address, business telephone number, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of a current or former employee or officer of the governmental entity, excluding:
 - (i) undercover law enforcement personnel; and
 - (ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;
 - (c) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;
 - (d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsection 63G-2-305(17) or (18);
 - (e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public Meetings Act, including the records of all votes of each member of the governmental entity;
 - (f) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter;
 - (g) unless otherwise classified as private under Section 63G-2-303, records or parts of records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional

Trust Lands Administration, the Division of Oil, Gas, and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

- (i) titles or encumbrances to real property;
 - (ii) restrictions on the use of real property;
 - (iii) the capacity of persons to take or convey title to real property; or
 - (iv) tax status for real and personal property;
 - (h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;
 - (i) data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;
 - (j) documentation of the compensation that a governmental entity pays to a contractor or private provider;
 - (k) summary data;
 - (l) voter registration records, including an individual's voting history, except for a voter registration record or those parts of a voter registration record that are classified as private under Subsections 63G-2-302(1)(j) through (m) or withheld under Subsection 20A-2-104(7);
 - (m) for an elected official, as defined in Section 11-47-102, a telephone number, if available, and email address, if available, where that elected official may be reached as required in Title 11, Chapter 47, Access to Elected Officials;
 - (n) for a school community council member, a telephone number, if available, and email address, if available, where that elected official may be reached directly as required in Section 53G-7-1203;
 - (o) annual audited financial statements of the Utah Educational Savings Plan described in Section 53B-8a-111; and
 - (p) an initiative packet, as defined in Section 20A-7-101, and a referendum packet, as defined in Section 20A-7-101, after the packet is submitted to a county clerk.
- (3) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b), Section 63G-2-302, 63G-2-304, or 63G-2-305:
- (a) administrative staff manuals, instructions to staff, and statements of policy;
 - (b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;
 - (c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;
 - (d) contracts entered into by a governmental entity;
 - (e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;
 - (f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63G-2-305(35);
 - (g) chronological logs and initial contact reports;
 - (h) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;
 - (i) empirical data contained in drafts if:
 - (i) the empirical data is not reasonably available to the requester elsewhere in similar form; and

- (ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;
 - (j) drafts that are circulated to anyone other than:
 - (i) a governmental entity;
 - (ii) a political subdivision;
 - (iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;
 - (iv) a government-managed corporation; or
 - (v) a contractor or private provider;
 - (k) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;
 - (l) original data in a computer program if the governmental entity chooses not to disclose the program;
 - (m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;
 - (n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;
 - (o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:
 - (i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and
 - (ii) the charges on which the disciplinary action was based were sustained;
 - (p) records maintained by the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas, and Mining that evidence mineral production on government lands;
 - (q) final audit reports;
 - (r) occupational and professional licenses;
 - (s) business licenses;
 - (t) a notice of violation, a notice of agency action under Section 63G-4-201, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline; and
 - (u)
 - (i) records that disclose a standard, regulation, policy, guideline, or rule regarding the operation of a correctional facility or the care and control of inmates committed to the custody of a correctional facility; and
 - (ii) records that disclose the results of an audit or other inspection assessing a correctional facility's compliance with a standard, regulation, policy, guideline, or rule described in Subsection (3)(u)(i).
- (4) The list of public records in this section is not exhaustive and should not be used to limit access to records.

Amended by Chapter 255, 2020 General Session

Amended by Chapter 399, 2020 General Session

Superseded 7/1/2024

63G-2-302 Private records.

(1) The following records are private:

- (a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;
- (b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;
- (c) records of publicly funded libraries that when examined alone or with other records identify a patron;
- (d) records received by or generated by or for:
 - (i) the Independent Legislative Ethics Commission, except for:
 - (A) the commission's summary data report that is required under legislative rule; and
 - (B) any other document that is classified as public under legislative rule; or
 - (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;
- (e) records received by, or generated by or for, the Independent Executive Branch Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review of Executive Branch Ethics Complaints;
- (f) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:
 - (i) if, prior to the meeting, the chair of the committee determines release of the records:
 - (A) reasonably could be expected to interfere with the investigation undertaken by the committee; or
 - (B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and
 - (ii) after the meeting, if the meeting was closed to the public;
- (g) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions;
- (h) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;
- (i) that part of a record indicating a person's social security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;
- (j) that part of a voter registration record identifying a voter's:
 - (i) driver license or identification card number;
 - (ii) social security number, or last four digits of the social security number;
 - (iii) email address;
 - (iv) date of birth; or
 - (v) phone number;
- (k) a voter registration record that is classified as a private record by the lieutenant governor or a county clerk under Subsection 20A-2-101.1(5)(a), 20A-2-104(4)(h), or 20A-2-204(4)(b);
- (l) a voter registration record that is withheld under Subsection 20A-2-104(7);
- (m) a withholding request form described in Subsections 20A-2-104(7) and (8) and any verification submitted in support of the form;
- (n) a record that:
 - (i) contains information about an individual;
 - (ii) is voluntarily provided by the individual; and
 - (iii) goes into an electronic database that:
 - (A) is designated by and administered under the authority of the Chief Information Officer; and

- (B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;
- (o) information provided to the Commissioner of Insurance under:
 - (i) Subsection 31A-23a-115(3)(a);
 - (ii) Subsection 31A-23a-302(4); or
 - (iii) Subsection 31A-26-210(4);
- (p) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;
- (q) information provided by an offender that is:
 - (i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap Offender Registry or Title 77, Chapter 43, Child Abuse Offender Registry; and
 - (ii) not required to be made available to the public under Subsection 77-41-110(4) or 77-43-108(4);
- (r) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves homeland security;
- (s) electronic toll collection customer account information received or collected under Section 72-6-118 and customer information described in Section 17B-2a-815 received or collected by a public transit district, including contact and payment information and customer travel data;
- (t) an email address provided by a military or overseas voter under Section 20A-16-501;
- (u) a completed military-overseas ballot that is electronically transmitted under Title 20A, Chapter 16, Uniform Military and Overseas Voters Act;
- (v) records received by or generated by or for the Political Subdivisions Ethics Review Commission established in Section 63A-15-201, except for:
 - (i) the commission's summary data report that is required in Section 63A-15-202; and
 - (ii) any other document that is classified as public in accordance with Title 63A, Chapter 15, Political Subdivisions Ethics Review Commission;
- (w) a record described in Section 53G-9-604 that verifies that a parent was notified of an incident or threat;
- (x) a criminal background check or credit history report conducted in accordance with Section 63A-3-201;
- (y) a record described in Subsection 53-5a-104(7);
- (z) on a record maintained by a county for the purpose of administering property taxes, an individual's:
 - (i) email address;
 - (ii) phone number; or
 - (iii) personal financial information related to a person's payment method;
- (aa) a record submitted by a taxpayer to establish the taxpayer's eligibility for an exemption, deferral, abatement, or relief under:
 - (i) Title 59, Chapter 2, Part 11, Exemptions;
 - (ii) Title 59, Chapter 2, Part 12, Property Tax Relief;
 - (iii) Title 59, Chapter 2, Part 18, Tax Deferral and Tax Abatement; or
 - (iv) Title 59, Chapter 2, Part 19, Armed Forces Exemptions;
- (bb) a record provided by the State Tax Commission in response to a request under Subsection 59-1-403(4)(y)(iii);
- (cc) a record of the Child Welfare Legislative Oversight Panel regarding an individual child welfare case, as described in Subsection 36-33-103(3);
- (dd) a record relating to drug or alcohol testing of a state employee under Section 63A-17-1004;

- (ee) a record relating to a request by a state elected official or state employee who has been threatened to the Division of Technology Services to remove personal identifying information from the open web under Section 63A-16-109; and
 - (ff) a record including confidential information as that term is defined in Section 67-27-106.
- (2) The following records are private if properly classified by a governmental entity:
- (a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);
 - (b) records describing an individual's finances, except that the following are public:
 - (i) records described in Subsection 63G-2-301(2);
 - (ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or
 - (iii) records that must be disclosed in accordance with another statute;
 - (c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;
 - (d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;
 - (e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it;
 - (f) any portion of a record in the custody of the Division of Aging and Adult Services, created in Section 26B-6-102, that may disclose, or lead to the discovery of, the identity of a person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult; and
 - (g) audio and video recordings created by a body-worn camera, as defined in Section 77-7a-103, that record sound or images inside a home or residence except for recordings that:
 - (i) depict the commission of an alleged crime;
 - (ii) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;
 - (iii) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;
 - (iv) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(f); or
 - (v) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording.
- (3)
- (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.
 - (b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63G-2-304 when the records are sought:
 - (i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or
 - (ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.
 - (c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Amended by Chapter 500, 2024 General Session

Amended by Chapter 508, 2024 General Session

Effective 7/1/2024

63G-2-302 Private records.

- (1) The following records are private:
- (a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;
 - (b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;
 - (c) records of publicly funded libraries that when examined alone or with other records identify a patron;
 - (d) records received by or generated by or for:
 - (i) the Independent Legislative Ethics Commission, except for:
 - (A) the commission's summary data report that is required under legislative rule; and
 - (B) any other document that is classified as public under legislative rule; or
 - (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;
 - (e) records received by, or generated by or for, the Independent Executive Branch Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review of Executive Branch Ethics Complaints;
 - (f) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:
 - (i) if, prior to the meeting, the chair of the committee determines release of the records:
 - (A) reasonably could be expected to interfere with the investigation undertaken by the committee; or
 - (B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and
 - (ii) after the meeting, if the meeting was closed to the public;
 - (g) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions;
 - (h) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;
 - (i) that part of a record indicating a person's social security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;
 - (j) that part of a voter registration record identifying a voter's:
 - (i) driver license or identification card number;
 - (ii) social security number, or last four digits of the social security number;
 - (iii) email address;
 - (iv) date of birth; or
 - (v) phone number;
 - (k) a voter registration record that is classified as a private record by the lieutenant governor or a county clerk under Subsection 20A-2-101.1(5)(a), 20A-2-104(4)(h), or 20A-2-204(4)(b);
 - (l) a voter registration record that is withheld under Subsection 20A-2-104(7);

- (m) a withholding request form described in Subsections 20A-2-104(7) and (8) and any verification submitted in support of the form;
- (n) a record that:
 - (i) contains information about an individual;
 - (ii) is voluntarily provided by the individual; and
 - (iii) goes into an electronic database that:
 - (A) is designated by and administered under the authority of the Chief Information Officer; and
 - (B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;
- (o) information provided to the Commissioner of Insurance under:
 - (i) Subsection 31A-23a-115(3)(a);
 - (ii) Subsection 31A-23a-302(4); or
 - (iii) Subsection 31A-26-210(4);
- (p) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;
- (q) information provided by an offender that is:
 - (i) required by the registration requirements of Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry; and
 - (ii) not required to be made available to the public under Subsection 77-41-110(4);
- (r) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves homeland security;
- (s) electronic toll collection customer account information received or collected under Section 72-6-118 and customer information described in Section 17B-2a-815 received or collected by a public transit district, including contact and payment information and customer travel data;
- (t) an email address provided by a military or overseas voter under Section 20A-16-501;
- (u) a completed military-overseas ballot that is electronically transmitted under Title 20A, Chapter 16, Uniform Military and Overseas Voters Act;
- (v) records received by or generated by or for the Political Subdivisions Ethics Review Commission established in Section 63A-15-201, except for:
 - (i) the commission's summary data report that is required in Section 63A-15-202; and
 - (ii) any other document that is classified as public in accordance with Title 63A, Chapter 15, Political Subdivisions Ethics Review Commission;
- (w) a record described in Section 53G-9-604 that verifies that a parent was notified of an incident or threat;
- (x) a criminal background check or credit history report conducted in accordance with Section 63A-3-201;
- (y) a record described in Subsection 53-5a-104(7);
- (z) on a record maintained by a county for the purpose of administering property taxes, an individual's:
 - (i) email address;
 - (ii) phone number; or
 - (iii) personal financial information related to a person's payment method;
- (aa) a record submitted by a taxpayer to establish the taxpayer's eligibility for an exemption, deferral, abatement, or relief under:
 - (i) Title 59, Chapter 2, Part 11, Exemptions;
 - (ii) Title 59, Chapter 2, Part 12, Property Tax Relief;
 - (iii) Title 59, Chapter 2, Part 18, Tax Deferral and Tax Abatement; or

- (iv) Title 59, Chapter 2, Part 19, Armed Forces Exemptions;
 - (bb) a record provided by the State Tax Commission in response to a request under Subsection 59-1-403(4)(y)(iii);
 - (cc) a record of the Child Welfare Legislative Oversight Panel regarding an individual child welfare case, as described in Subsection 36-33-103(3); and
 - (dd) a record relating to drug or alcohol testing of a state employee under Section 63A-17-1004;
 - (ee) a record relating to a request by a state elected official or state employee who has been threatened to the Division of Technology Services to remove personal identifying information from the open web under Section 63A-16-109; and
 - (ff) a record including confidential information as that term is defined in Section 67-27-105.
- (2) The following records are private if properly classified by a governmental entity:
- (a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);
 - (b) records describing an individual's finances, except that the following are public:
 - (i) records described in Subsection 63G-2-301(2);
 - (ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or
 - (iii) records that must be disclosed in accordance with another statute;
 - (c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;
 - (d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;
 - (e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it;
 - (f) any portion of a record in the custody of the Division of Aging and Adult Services, created in Section 26B-6-102, that may disclose, or lead to the discovery of, the identity of a person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult; and
 - (g) audio and video recordings created by a body-worn camera, as defined in Section 77-7a-103, that record sound or images inside a home or residence except for recordings that:
 - (i) depict the commission of an alleged crime;
 - (ii) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;
 - (iii) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;
 - (iv) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(f); or
 - (v) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording.
- (3)
- (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.
 - (b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63G-2-304 when the records are sought:
 - (i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

- (ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.
- (c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Amended by Chapter 234, 2024 General Session

63G-2-303 Private information concerning certain government employees.

(1) As used in this section:

- (a) "At-risk government employee" means a current or former:
 - (i) peace officer as specified in Section 53-13-102;
 - (ii) state or federal judge of an appellate, district, justice, or juvenile court, or court commissioner;
 - (iii) judge authorized by Title 39A, Chapter 5, Utah Code of Military Justice;
 - (iv) judge authorized by Armed Forces, Title 10, United States Code;
 - (v) federal prosecutor;
 - (vi) prosecutor appointed pursuant to Armed Forces, Title 10, United States Code;
 - (vii) law enforcement official as defined in Section 53-5-711;
 - (viii) prosecutor authorized by Title 39A, Chapter 5, Utah Code of Military Justice; or
 - (ix) state or local government employee who, because of the unique nature of the employee's regular work assignments or because of one or more recent credible threats directed to or against the employee, would be at immediate and substantial risk of physical harm if the employee's personal information is disclosed.
- (b) "Family member" means the spouse, child, sibling, parent, or grandparent of an at-risk government employee who is living with the employee.
- (c) "Personal information" means the employee's or the employee's family member's home address, home telephone number, personal mobile telephone number, personal pager number, personal email address, social security number, insurance coverage, marital status, or payroll deductions.

(2)

- (a) Pursuant to Subsection 63G-2-302(1)(h), an at-risk government employee may file a written application that:
 - (i) gives notice of the employee's status as an at-risk government employee to each agency of a government entity holding a record or a part of a record that would disclose the employee's personal information; and
 - (ii) requests that the government agency classify those records or parts of records as private.
- (b) An at-risk government employee desiring to file an application under this section may request assistance from the government agency to identify the individual records containing personal information.
- (c) Each government agency shall develop a form that:
 - (i) requires the at-risk government employee to designate each specific record or part of a record containing the employee's personal information that the applicant desires to be classified as private;
 - (ii) affirmatively requests that the government entity holding those records classify them as private;

- (iii) informs the employee that by submitting a completed form the employee may not receive official announcements affecting the employee's property, including notices about proposed municipal annexations, incorporations, or zoning modifications; and
 - (iv) contains a place for the signature required under Subsection (2)(d).
- (d) A form submitted by an employee under Subsection (2)(c) shall be signed by the highest ranking elected or appointed official in the employee's chain of command certifying that the employee submitting the form is an at-risk government employee.
- (3) A county recorder, county treasurer, county auditor, or a county tax assessor may fully satisfy the requirements of this section by:
 - (a) providing a method for the assessment roll and index and the tax roll and index that will block public access to the home address, home telephone number, situs address, and Social Security number; and
 - (b) providing the at-risk government employee requesting the classification with a disclaimer informing the employee that the employee may not receive official announcements affecting the employee's property, including notices about proposed annexations, incorporations, or zoning modifications.
- (4) A government agency holding records of an at-risk government employee classified as private under this section may release the record or part of the record if:
 - (a) the employee or former employee gives written consent;
 - (b) a court orders release of the records;
 - (c) the government agency receives a certified death certificate for the employee or former employee; or
 - (d) as it relates to the employee's voter registration record:
 - (i) the person to whom the record or part of the record is released is a qualified person under Subsection 20A-2-104(4)(n); and
 - (ii) the government agency's release of the record or part of the record complies with the requirements of Subsection 20A-2-104(4)(o).
- (5)
 - (a) If the government agency holding the private record receives a subpoena for the records, the government agency shall attempt to notify the at-risk government employee or former employee by mailing a copy of the subpoena to the employee's last-known mailing address together with a request that the employee either:
 - (i) authorize release of the record; or
 - (ii) within 10 days of the date that the copy and request are mailed, deliver to the government agency holding the private record a copy of a motion to quash filed with the court who issued the subpoena.
 - (b) The government agency shall comply with the subpoena if the government agency has:
 - (i) received permission from the at-risk government employee or former employee to comply with the subpoena;
 - (ii) not received a copy of a motion to quash within 10 days of the date that the copy of the subpoena was mailed; or
 - (iii) received a court order requiring release of the records.
- (6)
 - (a) Except as provided in Subsection (6)(b), a form submitted under this section remains in effect until the earlier of:
 - (i) four years after the date the employee signs the form, whether or not the employee's employment terminates before the end of the four-year period; and
 - (ii) one year after the government agency receives official notice of the death of the employee.

- (b) A form submitted under this section may be rescinded at any time by:
 - (i) the at-risk government employee who submitted the form; or
 - (ii) if the at-risk government employee is deceased, a member of the employee's immediate family.

Amended by Chapter 465, 2024 General Session

63G-2-304 Controlled records.

A record is controlled if:

- (1) the record contains medical, psychiatric, or psychological data about an individual;
- (2) the governmental entity reasonably believes that:
 - (a) releasing the information in the record to the subject of the record would be detrimental to the subject's mental health or to the safety of any individual; or
 - (b) releasing the information would constitute a violation of normal professional practice and medical ethics; and
- (3) the governmental entity has properly classified the record.

Renumbered and Amended by Chapter 382, 2008 General Session

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;
- (11) records the disclosure of which would jeopardize the life or safety of an individual;
- (12) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;
- (13) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;
- (14) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Health and Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;
- (15) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;
- (16) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;
- (17) records that are subject to the attorney client privilege;
- (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;
- (19)
 - (a)
 - (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and
 - (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and
 - (b)
 - (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:
 - (A) members of a legislative body;
 - (B) a member of a legislative body and a member of the legislative body's staff; or
 - (C) members of a legislative body's staff; and
 - (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;
- (20)
 - (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

- (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;
- (21) a research request from a legislator to a legislative staff member and research findings prepared in response to the request;
- (22) drafts, unless otherwise classified as public;
- (23) records concerning a governmental entity's strategy about:
 - (a) collective bargaining; or
 - (b) imminent or pending litigation;
- (24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;
- (25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;
- (26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;
- (27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;
- (28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;
- (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 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;
- (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;
- (39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;
- (40)
- (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:
 - (i) unpublished lecture notes;
 - (ii) unpublished notes, data, and information:
 - (A) relating to research; and
 - (B) of:
 - (I) the institution within the state system of higher education defined in Section 53B-1-102; or
 - (II) a sponsor of sponsored research;
 - (iii) unpublished manuscripts;
 - (iv) creative works in process;
 - (v) scholarly correspondence; and
 - (vi) confidential information contained in research proposals;
 - (b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
 - (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- (41)
- (a) records in the custody or control of the Office of the Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and
 - (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of the Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;
- (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;
- (57) information requested by and provided to the 911 Division under Section 63H-7a-302;
- (58) in accordance with Section 73-10-33:
 - (a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or
 - (b) an outline of an emergency response plan in possession of the state or a county or municipality;
- (59) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63A-13-201:
 - (a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;
 - (b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;
 - (c) before the time that an investigation or audit is completed and the final investigation or final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for the person's response or information;
 - (d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or
 - (e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit;
- (60) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health and Human Services, to discover Medicaid fraud, waste, or abuse;
- (61) information provided to the Department of Health and Human Services or the Division of Professional Licensing under Subsections 58-67-304(3) and (4) and Subsections 58-68-304(3) and (4);

- (62) a record described in Section 63G-12-210;
- (63) captured plate data that is obtained through an automatic license plate reader system used by a governmental entity as authorized in Section 41-6a-2003;
- (64) an audio or video recording created by a body-worn camera, as that term is defined in Section 77-7a-103, that records sound or images inside a hospital or health care facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care provider, as that term is defined in Section 78B-3-403, or inside a human service program as that term is defined in Section 26B-2-101, except for recordings that:
 - (a) depict the commission of an alleged crime;
 - (b) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;
 - (c) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;
 - (d) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(f); or
 - (e) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording;
- (65) a record pertaining to the search process for a president of an institution of higher education described in Section 53B-2-102, except for application materials for a publicly announced finalist;
- (66) an audio recording that is:
 - (a) produced by an audio recording device that is used in conjunction with a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition;
 - (b) produced during an emergency event when an individual employed to provide law enforcement, fire protection, paramedic, emergency medical, or other first responder service:
 - (i) is responding to an individual needing resuscitation or with a life-threatening condition; and
 - (ii) uses a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition; and
 - (c) intended and used for purposes of training emergency responders how to improve their response to an emergency situation;
- (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 the individual was incarcerated at the time the image was taken;
 - (b) a law enforcement agency releases or disseminates the image:
 - (i) after determining that the individual is a fugitive or an imminent threat to an individual or to public safety and releasing or disseminating the image will assist in apprehending the individual or reducing or eliminating the threat; or
 - (ii) to a potential witness or other individual with direct knowledge of events relevant to a criminal investigation or criminal proceeding for the purpose of identifying or locating an individual in connection with the criminal investigation or criminal proceeding;
 - (c) a judge orders the release or dissemination of the image based on a finding that the release or dissemination is in furtherance of a legitimate law enforcement interest; or
 - (d) the image is displayed to a person who is permitted to view the image under Section 17-22-30.
- (81) a record:
- (a) concerning an interstate claim to the use of waters in the Colorado River system;
 - (b) relating to a judicial proceeding, administrative proceeding, or negotiation with a representative from another state or the federal government as provided in Section 63M-14-205; 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 Colorado River system;
 - (ii) harm the ability of the Colorado River Authority of Utah or river commissioner to negotiate the best terms and conditions regarding the use of water in the Colorado River system; or
 - (iii) give an advantage to another state or to the federal government in negotiations regarding the use of water in the Colorado River system;
- (82) any part of an application described in Section 63N-16-201 that the Governor's Office of Economic Opportunity determines is nonpublic, confidential information that if disclosed would result in actual economic harm to the applicant, but this Subsection (82) may not be used to restrict access to a record evidencing a final contract or approval decision;
- (83) the following records of a drinking water or wastewater facility:
- (a) an engineering or architectural drawing of the drinking water or wastewater facility; 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.

Amended by Chapter 18, 2024 General Session
Amended by Chapter 101, 2024 General Session
Amended by Chapter 135, 2024 General Session
Amended by Chapter 267, 2024 General Session
Amended by Chapter 344, 2024 General Session
Amended by Chapter 522, 2024 General Session

63G-2-305.5 Viewing or obtaining lists of signatures.

- (1) The records custodian of a signature described in Subsection 63G-2-305(74) shall, upon request, except for a name or signature classified as private under Title 20A, Chapter 2, Voter Registration:
 - (a) provide a list of the names of the individuals who signed the petition or request; and

- (b) permit an individual to view, but not take a copy or other image of, the signatures on a political petition described in Subsection 63G-2-305(74).
- (2) The records custodian of a signature described in Subsection 63G-2-305(75) shall, upon request, except for a name or signature classified as private under Title 20A, Chapter 2, Voter Registration:
 - (a) provide a list of the names of registered voters, excluding the names that are classified as private under Title 20A, Chapter 2, Voter Registration; and
 - (b) except for a signature classified as private under Title 20A, Chapter 2, Voter Registration, permit an individual to view, but not take a copy or other image of, the signature on a voter registration record.
- (3) Except for a signature classified as private under Title 20A, Chapter 2, Voter Registration, the records custodian of a signature described in Subsection 63G-2-305(76) shall, upon request, permit an individual to view, but not take a copy or other image of, a signature.

Amended by Chapter 135, 2024 General Session

63G-2-306 Procedure to determine classification.

- (1) If more than one provision of this chapter could govern the classification of a record, the governmental entity shall classify the record by considering the nature of the interests intended to be protected and the specificity of the competing provisions.
- (2) Nothing in Subsection 63G-2-302(2), Section 63G-2-304, or 63G-2-305 requires a governmental entity to classify a record as private, controlled, or protected.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-307 Duty to evaluate records and make designations, classifications, and annotations.

- (1) A governmental entity shall, for each record series that the governmental entity keeps, uses, or creates:
 - (a) evaluate all record series;
 - (b) designate each record series as provided by this chapter and Title 63A, Chapter 12, Division of Archives and Records Service and Management of Government Records; and
 - (c) report to the state archives:
 - (i) the designation described in Subsection (1)(b); and
 - (ii) if the governmental entity is an executive branch agency, as defined in Section 63A-12-100.5, the privacy annotation.
- (2) A governmental entity may classify a particular record, record series, or information within a record at any time, but is not required to classify a particular record, record series, or information until access to the record is requested.
- (3) A governmental entity may redesignate a record series or reclassify a record or record series, or information within a record at any time.

Amended by Chapter 173, 2023 General Session

63G-2-308 Allowing or denying access based on status of information in a record.

Notwithstanding any other provision in this chapter, if a governmental entity receives a request for access to a record that contains both information that the requester is entitled to inspect and

information that the requester is not entitled to inspect under this chapter, and, if the information the requester is entitled to inspect is intelligible, the governmental entity:

- (1) shall, except as provided in Subsection 63G-2-201(1)(b)(iii), allow access to information in the record that the requester is entitled to inspect under this chapter; and
- (2) may deny access to information in the record if the information is exempt from disclosure to the requester, issuing a notice of denial as provided in Section 63G-2-205.

Amended by Chapter 334, 2019 General Session

63G-2-309 Confidentiality claims.

- (1)
 - (a)
 - (i) Any person who provides to a governmental entity a record that the person believes should be protected under Subsection 63G-2-305(1) or (2) or both Subsections 63G-2-305(1) and (2) shall provide with the record:
 - (A) a written claim of business confidentiality; and
 - (B) a concise statement of reasons supporting the claim of business confidentiality.
 - (ii) Any of the following who provides to an institution within the state system of higher education defined in Section 53B-1-102 a record that the person or governmental entity believes should be protected under Subsection 63G-2-305(40)(a)(ii) or (vi) or both Subsections 63G-2-305(40)(a)(ii) and (vi) shall provide the institution within the state system of higher education a written claim of business confidentiality in accordance with Section 53B-16-304:
 - (A) a person;
 - (B) a federal governmental entity;
 - (C) a state governmental entity; or
 - (D) a local governmental entity.
 - (b) A person or governmental entity who complies with this Subsection (1) shall be notified by the governmental entity to whom the request for a record is made if:
 - (i) a record claimed to be protected under one of the following is classified public:
 - (A) Subsection 63G-2-305(1);
 - (B) Subsection 63G-2-305(2);
 - (C) Subsection 63G-2-305(40)(a)(ii);
 - (D) Subsection 63G-2-305(40)(a)(vi); or
 - (E) a combination of the provisions described in Subsections (1)(b)(i)(A) through (D); or
 - (ii) the governmental entity to whom the request for a record is made determines that the record claimed to be protected under a provision listed in Subsection (1)(b)(i) should be released after balancing interests under Subsection 63G-2-201(5)(b) or 63G-2-401(6).
 - (c) A person who makes a claim of business confidentiality under this Subsection (1) shall protect, defend, and indemnify the governmental entity that retains the record, and all staff and employees of the governmental entity from and against any claims, liability, or damages resulting from or arising from a denial of access to the record as a protected record based on the claim of business confidentiality.
- (2)
 - (a) Except as provided in Subsection (2)(b) or by court order, the governmental entity to whom the request for a record is made may not disclose a record claimed to be protected under a provision listed in Subsection (1)(b)(i) but which the governmental entity or State Records

Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal.

- (b) Subsection (2)(a) does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee.
- (3) Disclosure or acquisition of information under this chapter does not constitute misappropriation under Subsection 13-24-2(2).

Amended by Chapter 516, 2023 General Session

63G-2-310 Records made public after 75 years.

- (1) The classification of a record is not permanent and a record that was not classified public under this act shall become a public record when the justification for the original or any subsequent restrictive classification no longer exists. A record shall be presumed to be public 75 years after its creation, except that a record that contains information about an individual 21 years old or younger at the time of the record's creation shall be presumed to be public 100 years after its creation.
- (2) Subsection (1) does not apply to records of unclaimed property held by the state treasurer in accordance with Title 67, Chapter 4a, Revised Uniform Unclaimed Property Act.

Renumbered and Amended by Chapter 382, 2008 General Session

**Part 4
Appeals**

63G-2-400.5 Definitions.

As used in this part:

- (1) "Access denial" means a governmental entity's denial, under Subsection 63G-2-204(9) or Section 63G-2-205, in whole or in part, of a record request.
- (2) "Appellate affirmation" means a decision of a chief administrative officer, local appeals board, or State Records Committee affirming an access denial.
- (3) "Interested party" means a person, other than a requester, who is aggrieved by an access denial or an appellate affirmation, whether or not the person participated in proceedings leading to the access denial or appellate affirmation.
- (4) "Local appeals board" means an appeals board established by a political subdivision under Subsection 63G-2-701(5)(c).
- (5) "Record request" means a request for a record under Section 63G-2-204.
- (6) "Records committee appellant" means:
 - (a) a political subdivision that seeks to appeal a decision of a local appeals board to the State Records Committee; or
 - (b) a requester or interested party who seeks to appeal to the State Records Committee a decision affirming an access denial.
- (7) "Requester" means a person who submits a record request to a governmental entity.

Amended by Chapter 254, 2019 General Session

Amended by Chapter 334, 2019 General Session

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

- (1)
 - (a) A requester or interested party may appeal an access denial or the denial of a fee waiver under Subsection 63G-2-203(4) to the chief administrative officer of the governmental entity by filing a notice of appeal with the chief administrative officer within 30 days after:
 - (i) for an access denial:
 - (A) the governmental entity sends a notice of denial under Section 63G-2-205, if the governmental entity denies a record request under Subsection 63G-2-205(1); or
 - (B) the record request is considered denied under Subsection 63G-2-204(9), if that subsection applies; or
 - (ii) for a denial of a fee waiver, the date the governmental entity notifies the requester that the fee waiver is denied.
 - (b) If a governmental entity claims extraordinary circumstances and specifies the date when the records will be available under Subsection 63G-2-204(4), and, if the requester believes the extraordinary circumstances do not exist or that the date specified is unreasonable, the requester may appeal the governmental entity's claim of extraordinary circumstances or date for compliance to the chief administrative officer by filing a notice of appeal with the chief administrative officer within 30 days after notification of a claim of extraordinary circumstances by the governmental entity, despite the lack of a "determination" or its equivalent under Subsection 63G-2-204(9).
- (2) A notice of appeal shall contain:
 - (a) the name, mailing address, and daytime telephone number of the requester or interested party; and
 - (b) the relief sought.
- (3) The requester or interested party may file a short statement of facts, reasons, and legal authority in support of the appeal.
- (4)
 - (a) If the appeal involves a record that is the subject of a business confidentiality claim under Section 63G-2-309, the chief administrative officer shall:
 - (i) send notice of the appeal to the business confidentiality claimant within three business days after receiving notice, except that if notice under this section must be given to more than 35 persons, it shall be given as soon as reasonably possible; and
 - (ii) send notice of the business confidentiality claim and the schedule for the chief administrative officer's determination to the requester or interested party within three business days after receiving notice of the appeal.
 - (b) The business confidentiality claimant shall have seven business days after notice is sent by the administrative officer to submit further support for the claim of business confidentiality.
- (5)
 - (a) The chief administrative officer shall make a decision on the appeal within:
 - (i)
 - (A) 10 business days after the chief administrative officer's receipt of the notice of appeal; or
 - (B) five business days after the chief administrative officer's receipt of the notice of appeal, if the requester or interested party demonstrates that an expedited decision benefits the public rather than the requester or interested party; or
 - (ii) 12 business days after the governmental entity sends the notice of appeal to a person who submitted a claim of business confidentiality.
 - (b)

- (i) If the chief administrative officer fails to make a decision on an appeal of an access denial within the time specified in Subsection (5)(a), the failure is the equivalent of a decision affirming the access denial.
- (ii) If the chief administrative officer fails to make a decision on an appeal under Subsection (1)(b) within the time specified in Subsection (5)(a), the failure is the equivalent of a decision affirming the claim of extraordinary circumstances or the reasonableness of the date specified when the records will be available.
- (c) The provisions of this section notwithstanding, the parties participating in the proceeding may, by agreement, extend the time periods specified in this section.
- (6) Except as provided in Section 63G-2-406, the chief administrative officer may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 if the interests favoring access are greater than or equal to the interests favoring restriction of access.
- (7)
 - (a) The governmental entity shall send written notice of the chief administrative officer's decision to all participants.
 - (b) If the chief administrative officer's decision is to affirm the access denial in whole or in part or to affirm the fee waiver denial, the notice under Subsection (7)(a) shall include:
 - (i) a statement that the requester has a right under Section 63A-12-111 to request the government records ombudsman to mediate the dispute between the requester and the governmental entity concerning the access denial or the fee waiver denial;
 - (ii) a statement that the requester or interested party has the right to appeal the decision, as provided in Section 63G-2-402, to:
 - (A) the State Records Committee or district court; or
 - (B) the local appeals board, if the governmental entity is a political subdivision and the governmental entity has established a local appeals board;
 - (iii) the time limits for filing an appeal described in Subsection (7)(b)(ii), including an explanation of a suspension of the time limits, as provided in Subsections 63G-2-403(1)(c) and 63G-2-404(1)(b), for a requester if the requester seeks mediation under Section 63A-12-111; and
 - (iv) the name and business address of:
 - (A) the executive secretary of the State Records Committee;
 - (B) the individual designated as the contact individual for the appeals board, if the governmental entity is a political subdivision that has established an appeals board under Subsection 63G-2-701(5)(c); and
 - (C) the government records ombudsman.
- (8) A person aggrieved by a governmental entity's classification or designation determination under this chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a nonrequester is the only appellant, the procedures provided in this section shall apply, except that the decision on the appeal shall be made within 30 days after receiving the notice of appeal.
- (9) The duties of the chief administrative officer under this section may be delegated.

Amended by Chapter 407, 2024 General Session

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

- (1) If the decision of the chief administrative officer of a governmental entity under Section 63G-2-401 is to affirm the denial of a record request or to affirm the denial of a fee waiver, the requester may:
 - (a)
 - (i) appeal the decision to the State Records Committee, as provided in Section 63G-2-403; or
 - (ii) petition for judicial review of the decision in district court, as provided in Section 63G-2-404;
 - (b) seek mediation of the access denial or fee waiver denial under Subsection 63A-12-111(2)(c);
or
 - (c) appeal the decision to the local appeals board if:
 - (i) the decision is of a chief administrative officer of a governmental entity that is a political subdivision; and
 - (ii) the political subdivision has established a local appeals board.
- (2) A requester who appeals a chief administrative officer's decision to the State Records Committee or a local appeals board does not lose or waive the right to seek judicial review of the decision of the State Records Committee or local appeals board.
- (3) As provided in Section 63G-2-403, an interested party may appeal to the State Records Committee a chief administrative officer's decision under Section 63G-2-401 affirming an access denial.

Amended by Chapter 407, 2024 General Session

63G-2-403 Appeals to the State Records Committee.

- (1)
 - (a) A records committee appellant appeals to the State Records Committee by filing a notice of appeal with the executive secretary of the State Records Committee no later than 30 days after the date of issuance of the decision being appealed.
 - (b) Notwithstanding Subsection (1)(a), a requester may file a notice of appeal with the executive secretary of the State Records Committee no later than 45 days after the day on which the record request is made if:
 - (i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and
 - (ii) the chief administrative officer fails to make a decision under Section 63G-2-401.
 - (c) The time for a requester to file a notice of appeal under Subsection (1)(a) or (b) is suspended for the period of time that:
 - (i) begins the date the requester submits a request under Section 63A-12-111 for the government records ombudsman to mediate the dispute between the requester and the governmental entity; and
 - (ii) ends the earlier of the following dates:
 - (A) the date that the government records ombudsman certifies in writing that the mediation is concluded; or
 - (B) the date that the government records ombudsman certifies in writing that the mediation did not occur or was not concluded because of a lack of the required consent.
- (2) The notice of appeal shall:
 - (a) contain the name, mailing address, and daytime telephone number of the records committee appellant;
 - (b) be accompanied by a copy of the decision being appealed; and
 - (c) state the relief sought.
- (3) The records committee appellant:

- (a) shall, on the day on which the notice of appeal is filed with the State Records Committee, serve a copy of the notice of appeal on:
 - (i) the governmental entity whose access denial or fee waiver denial is the subject of the appeal, if the records committee appellant is a requester or interested party; or
 - (ii) the requester or interested party who is a party to the local appeals board proceeding that resulted in the decision that the political subdivision is appealing to the committee, if the records committee appellant is a political subdivision; and
 - (b) may file a short statement of facts, reasons, and legal authority in support of the appeal.
- (4)
- (a) Except as provided in Subsections (4)(b) and (c), no later than seven business days after receiving a notice of appeal, the executive secretary of the State Records Committee shall:
 - (i) schedule a hearing for the State Records Committee to discuss the appeal at the next regularly scheduled committee meeting falling at least 16 days after the date the notice of appeal is filed but no longer than 64 calendar days after the date the notice of appeal was filed except that the committee may schedule an expedited hearing upon application of the records committee appellant and good cause shown;
 - (ii) send a copy of the notice of hearing to the records committee appellant; and
 - (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing to:
 - (A) each member of the State Records Committee;
 - (B) the records officer and the chief administrative officer of the governmental entity whose access denial is the subject of the appeal, if the records committee appellant is a requester or interested party;
 - (C) any person who made a business confidentiality claim under Section 63G-2-309 for a record that is the subject of the appeal; and
 - (D) all persons who participated in the proceedings before the governmental entity's chief administrative officer, if the appeal is of the chief administrative officer's decision affirming an access denial.
 - (b)
 - (i) The executive secretary of the State Records Committee may decline to schedule a hearing if the record series that is the subject of the appeal has been found by the committee in a previous hearing involving the same governmental entity to be appropriately classified as private, controlled, or protected.
 - (ii)
 - (A) If the executive secretary of the State Records Committee declines to schedule a hearing, the executive secretary shall send a notice to the records committee appellant indicating that the request for hearing has been denied and the reason for the denial.
 - (B) The State Records Committee shall make rules to implement this section as provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (c) The executive secretary of the State Records Committee may schedule a hearing on an appeal to the State Records Committee at a regularly scheduled State Records Committee meeting that is later than the period described in Subsection (4)(a)(i) if that committee meeting is the first regularly scheduled State Records Committee meeting at which there are fewer than 10 appeals scheduled to be heard.
- (5)
- (a) No later than five business days before the hearing, a governmental entity shall submit to the executive secretary of the State Records Committee a written statement of facts, reasons, and legal authority in support of the governmental entity's position.

- (b) The governmental entity shall send a copy of the written statement by first class mail, postage prepaid, to the requester or interested party involved in the appeal. The executive secretary shall forward a copy of the written statement to each member of the State Records Committee.
- (6)
- (a) No later than 10 business days after the day on which the executive secretary sends the notice of appeal, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention with the State Records Committee.
- (b) Any written statement of facts, reasons, and legal authority in support of the intervener's position shall be filed with the request for intervention.
- (c) The person seeking intervention shall provide copies of the statement described in Subsection (6)(b) to all parties to the proceedings before the State Records Committee.
- (7) The State Records Committee shall hold a hearing within the period of time described in Subsection (4).
- (8) At the hearing, the State Records Committee shall allow the parties to testify, present evidence, and comment on the issues. The committee may allow other interested persons to comment on the issues.
- (9)
- (a)
- (i) The State Records Committee:
- (A) may review the disputed records; and
- (B) shall review the disputed records, if the committee is weighing the various interests under Subsection (11).
- (ii) A review of the disputed records under Subsection (9)(a)(i) shall be in camera.
- (b) Members of the State Records Committee may not disclose any information or record reviewed by the committee in camera unless the disclosure is otherwise authorized by this chapter.
- (10)
- (a) Discovery is prohibited, but the State Records Committee may issue subpoenas or other orders to compel production of necessary evidence.
- (b) When the subject of a State Records Committee subpoena disobeys or fails to comply with the subpoena, the committee may file a motion for an order to compel obedience to the subpoena with the district court.
- (c)
- (i) The State Records Committee's review shall be de novo, if the appeal is an appeal from a decision of a chief administrative officer:
- (A) issued under Section 63G-2-401; or
- (B) issued by a chief administrative officer of a political subdivision that has not established a local appeals board.
- (ii) For an appeal from a decision of a local appeals board, the State Records Committee shall review and consider the decision of the local appeals board.
- (11)
- (a) No later than seven business days after the hearing, the State Records Committee shall issue a signed order:
- (i) granting the relief sought, in whole or in part; or
- (ii) upholding the governmental entity's access denial, in whole or in part.
- (b) Except as provided in Section 63G-2-406, the State Records Committee may, upon consideration and weighing of the various interests and public policies pertinent to the

classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the public interest favoring access is greater than or equal to the interest favoring restriction of access.

- (c) In making a determination under Subsection (11)(b), the State Records Committee shall consider and, where appropriate, limit the requester's or interested party's use and further disclosure of the record in order to protect:
- (i) privacy interests in the case of a private or controlled record;
 - (ii) business confidentiality interests in the case of a record protected under Subsection 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and
 - (iii) privacy interests or the public interest in the case of other protected records.
- (12) The order of the State Records Committee shall include:
- (a) a statement of reasons for the decision, including citations to this chapter, court rule or order, another state statute, federal statute, or federal regulation that governs disclosure of the record, if the citations do not disclose private, controlled, or protected information;
 - (b) a description of the record or portions of the record to which access was ordered or denied, if the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);
 - (c) a statement that any party to the proceeding before the State Records Committee may appeal the committee's decision to district court; and
 - (d) a brief summary of the appeals process, the time limits for filing an appeal, and a notice that in order to protect its rights on appeal, the party may wish to seek advice from an attorney.
- (13) If the State Records Committee fails to issue a decision within 73 calendar days of the filing of the notice of appeal, that failure is the equivalent of an order denying the appeal. A records committee appellant shall notify the State Records Committee in writing if the records committee appellant considers the appeal denied.
- (14) A party to a proceeding before the State Records Committee may seek judicial review in district court of a State Records Committee order by filing a petition for review of the order as provided in Section 63G-2-404.
- (15)
- (a) Unless a notice of intent to appeal is filed under Subsection (15)(b), each party to the proceeding shall comply with the order of the State Records Committee.
 - (b) If a party disagrees with the order of the State Records Committee, that party may file a notice of intent to appeal the order.
 - (c) If the State Records Committee orders the governmental entity to produce a record and no appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a record, the governmental entity shall:
 - (i) produce the record; and
 - (ii) file a notice of compliance with the committee.
 - (d)
 - (i) If the governmental entity that is ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the State Records Committee may do either or both of the following:
 - (A) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or
 - (B) send written notice of the governmental entity's noncompliance to the governor.
 - (ii) In imposing a civil penalty, the State Records Committee shall consider the gravity and circumstances of the violation, including whether the failure to comply was due to neglect or was willful or intentional.

Amended by Chapter 407, 2024 General Session

63G-2-404 Judicial review.

- (1)
 - (a) A petition for judicial review of an order or decision, as allowed under this part, in Section 63G-2-209, or in Subsection 63G-2-701(6)(a)(ii), shall be filed no later than 30 days after the date of the order or decision, subject to Subsection (1)(b).
 - (b) The time for a requester to file a petition for judicial review under Subsection (1)(a) is suspended for the period of time that:
 - (i) begins the date the requester submits a request under Section 63A-12-111 for the government records ombudsman to mediate the dispute between the requester and the governmental entity; and
 - (ii) ends the earlier of the following dates:
 - (A) the date that the government records ombudsman certifies in writing that the mediation is concluded; or
 - (B) the date that the government records ombudsman certifies in writing that the mediation did not occur or was not concluded because of a lack of the required consent.
- (2)
 - (a) A petition for judicial review is a complaint governed by the Utah Rules of Civil Procedure and shall contain:
 - (i) the petitioner's name and mailing address;
 - (ii) a copy of the State Records Committee order from which the appeal is taken, if the petitioner is seeking judicial review of an order of the State Records Committee;
 - (iii) the name and mailing address of the governmental entity that issued the initial determination with a copy of that determination;
 - (iv) a request for relief specifying the type and extent of relief requested; and
 - (v) a statement of the reasons why the petitioner is entitled to relief.
 - (b) Except in exceptional circumstances, a petition for judicial review may not raise an issue that was not raised in the underlying appeal and order.
- (3) If the appeal is based on the denial of access to a protected record based on a claim of business confidentiality, the court shall allow the claimant of business confidentiality to provide to the court the reasons for the claim of business confidentiality.
- (4) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.
- (5) The district court may review the disputed records. The review shall be in camera.
- (6)
 - (a) The court shall:
 - (i) make the court's decision de novo, but, for a petition seeking judicial review of a State Records Committee order, allow introduction of evidence presented to the State Records Committee;
 - (ii) determine all questions of fact and law without a jury; and
 - (iii) decide the issue at the earliest practical opportunity.
 - (b) A court may remand a petition for judicial review to the State Records Committee if:
 - (i) the remand is to allow the State Records Committee to decide an issue that:
 - (A) involves access to a record; and
 - (B) the State Records Committee has not previously addressed in the proceeding that led to the petition for judicial review; and

- (ii) the court determines that remanding to the State Records Committee is in the best interests of justice.
- (7)
- (a) Except as provided in Section 63G-2-406, the court may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the interest favoring access is greater than or equal to the interest favoring restriction of access.
 - (b) The court shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63G-2-305(1) and (2), and privacy interests or the public interest in the case of other protected records.

Amended by Chapter 407, 2024 General Session

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

- (1) A court may, on appeal or in a declaratory or other action, order the confidential treatment of records for which no exemption from disclosure applies if:
 - (a) there are compelling interests favoring restriction of access to the record; and
 - (b) the interests favoring restriction of access clearly are greater than or equal to the interests favoring access.
- (2) If a governmental entity requests a court to restrict access to a record under this section, the court shall require the governmental entity to pay the reasonable attorney fees and costs incurred by the lead party in opposing the governmental entity's request, if:
 - (a) the court finds that no statutory or constitutional exemption from disclosure could reasonably apply to the record in question; and
 - (b) the court denies confidential treatment under this section.
- (3) This section does not apply to records that are specifically required to be public under statutory provisions outside of this chapter or under Section 63G-2-301, except as provided in Subsection (4).
- (4)
 - (a) Access to drafts and empirical data in drafts may be limited under this section, but the court may consider, in its evaluation of interests favoring restriction of access, only those interests that relate to the underlying information, and not to the deliberative nature of the record.
 - (b) Access to original data in a computer program may be limited under this section, but the court may consider, in its evaluation of interests favoring restriction of access, only those interests that relate to the underlying information, and not to the status of that data as part of a computer program.
- (5) Except for the waiver of immunity in Subsection 63G-7-301(2)(e), a claim for attorney fees or costs under this section is not subject to Chapter 7, Governmental Immunity Act of Utah.

Amended by Chapter 388, 2022 General Session

63G-2-406 Evidentiary standards for release of certain enforcement and litigation records.

- (1) A record that is classified as protected under Subsection 63G-2-305(10), (17), (18), (23), (24), or (33) may be ordered to be disclosed under the provisions of Subsection 63G-2-401(6), 63G-2-403(11)(b), or 63G-2-404(7)(a) only if the person or party seeking disclosure of the

record has established, by a preponderance of the evidence, that the public interest favoring access is equal to or greater than the interest favoring restriction of access.

- (2) A record that is classified as protected under Subsection 63G-2-305(11) may be ordered to be disclosed under the provisions of Subsection 63G-2-401(6), 63G-2-403(11)(b), or 63G-2-404(7) only if the person or party seeking disclosure of the record has established, by clear and convincing evidence, that the public interest favoring access is equal to or greater than the interest favoring restriction of access.

Amended by Chapter 445, 2013 General Session

Part 5

State Records Committee

63G-2-501 State Records Committee created -- Membership -- Terms -- Vacancies -- Expenses.

- (1) There is created the State Records Committee within the Department of Government Operations consisting of the following seven individuals:
- (a) an individual in the private sector whose profession requires the individual to create or manage records that, if created by a governmental entity, would be private or controlled;
 - (b) an individual with experience with electronic records and databases, as recommended by a statewide technology advocacy organization that represents the public, private, and nonprofit sectors;
 - (c) the director of the Division of Archives and Records Services or the director's designee;
 - (d) two citizen members;
 - (e) one person representing political subdivisions, as recommended by the Utah League of Cities and Towns; and
 - (f) one individual representing the news media.
- (2) The governor shall appoint or reappoint the members described in Subsections (1)(a), (b), (d), (e), and (f) with the advice and consent of the Senate in accordance with Chapter 24, Part 2, Vacancies.
- (3)
- (a) Except as provided in Subsection (3)(b), the governor shall appoint each member to a four-year term.
 - (b) Notwithstanding Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.
 - (c) Each appointed member is eligible for reappointment for one additional term.
- (4) When a vacancy occurs in the membership for any reason, the governor shall, with the advice and consent of the Senate in accordance with Chapter 24, Part 2, Vacancies, appoint a replacement for the unexpired term.
- (5) A member of the State Records Committee may not receive compensation or benefits for the member's service on the committee, 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 under Sections 63A-3-106 and 63A-3-107.

- (6) A member described in Subsection (1)(a), (b), (d), (e), or (f) shall comply with the conflict of interest provisions described in Chapter 24, Part 3, Conflicts of Interest.

Amended by Chapter 529, 2024 General Session

63G-2-502 State Records Committee -- Duties.

- (1) The State Records Committee shall:
- (a) hear appeals from determinations of access under Section 63G-2-403;
 - (b) determine disputes submitted by the state auditor under Subsection 67-3-1(17)(d); and
 - (c) appoint a chair from among the committee's members.
- (2) The State Records Committee may:
- (a) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to govern the committee's proceedings; and
 - (b) by order, after notice and hearing, reassign classification and designation for any record series by a governmental entity if the governmental entity's classification or designation is inconsistent with this chapter.
- (3)
- (a) The State Records Committee shall annually appoint an executive secretary to provide administrative support to the committee.
 - (b) The executive secretary is not a voting member of the committee.
- (4) Five members of the State Records Committee are a quorum for the transaction of business.
- (5) The state archives shall provide staff and support services for the State Records Committee.
- (6) If the State Records Committee reassigns the classification or designation of a record or record series under Subsection (2)(b), any affected governmental entity or any other interested person may appeal the reclassification or redesignation to the district court. The district court shall hear the matter de novo.
- (7) The Office of the Attorney General shall provide counsel to the State Records Committee.

Amended by Chapter 254, 2019 General Session

Part 6
Collection of Information and Accuracy of Records

63G-2-601 Rights of individuals on whom data is maintained -- Classification and personal identifying information statement -- Notice to provider of information.

- (1)
- (a) Each governmental entity shall file with the state archivist a statement explaining, for each record series collected, maintained, or used by the governmental entity, the purposes for which each private or controlled record in the record series is collected, maintained, or used by that governmental entity.
 - (b) Each executive branch agency, as defined in Section 63A-12-100.5, shall file with the state archivist a statement explaining, for each record series collected, maintained, or used by the executive branch agency, the purposes for which the personal identifying information in the record series is collected, maintained, or used by the executive branch agency.
 - (c) The statement filed under Subsection (1)(a) or (b):

- (i) shall, for each purpose described in Subsection (1)(a) or (b), identify the authority under which the governmental entity or executive branch agency collects the records or information included in the statement described in Subsection (1)(a) or (b); and
 - (ii) is a public record.
- (2)
- (a) A governmental entity shall provide the notice described in this Subsection (2) to a person that is asked to furnish information that could be classified as a private or controlled record.
 - (b) An executive branch agency, as defined in Section 63A-12-100.5, shall provide the notice described in this Subsection (2) to a person that is asked to furnish personal identifying information.
 - (c) The notice required under Subsection (2)(a) or (b) shall:
 - (i) identify the record series that includes the information described in Subsection (2)(a) or (b);
 - (ii) state the reasons the person is asked to furnish the information;
 - (iii) state the intended uses of the information;
 - (iv) state the consequences for refusing to provide the information; and
 - (v) disclose the classes of persons and the governmental entities that currently:
 - (A) share the information with the governmental entity; or
 - (B) receive the information from the governmental entity on a regular or contractual basis.
 - (d) The governmental entity shall:
 - (i) post the notice required under this Subsection (2) in a prominent place at all locations where the governmental entity collects the information; or
 - (ii) include the notice required under this Subsection (2) as part of the documents or forms that are used by the governmental entity to collect the information.
- (3) Upon request, each governmental entity shall, in relation to the information described in Subsection (2)(a) or (b), as applicable, explain to a person:
- (a) the reasons the person is asked to furnish information;
 - (b) the intended uses of the information;
 - (c) the consequences for refusing to provide the information; and
 - (d) the reasons and circumstances under which the information may be shared with, or provided to, other persons or governmental entities.
- (4) A governmental entity may use the information that the governmental entity is required to disclose under Subsection (2)(a) or (b) only for those purposes:
- (a) given in the statement filed with the state archivist under Subsection (1); or
 - (b) for which another governmental entity may use the record under Section 63G-2-206.

Amended by Chapter 173, 2023 General Session

63G-2-602 Disclosure to subject of records -- Context of use.

When providing records under Subsection 63G-2-202(1) or when providing public records about an individual to the persons specified in Subsection 63G-2-202(1), a governmental entity shall, upon request, disclose the context in which the record is used.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-603 Requests to amend a record -- Appeals.

- (1) Proceedings of state agencies under this section shall be governed by Title 63G, Chapter 4, Administrative Procedures Act.
- (2)

- (a) Subject to Subsection (8), an individual may contest the accuracy or completeness of any public, or private, or protected record concerning him by requesting the governmental entity to amend the record. However, this section does not affect the right of access to private or protected records.
- (b) The request shall contain the following information:
 - (i) the requester's name, mailing address, and daytime telephone number; and
 - (ii) a brief statement explaining why the governmental entity should amend the record.
- (3) The governmental entity shall issue an order either approving or denying the request to amend as provided in Title 63G, Chapter 4, Administrative Procedures Act, or, if the act does not apply, no later than 30 days after receipt of the request.
- (4) If the governmental entity approves the request, it shall correct all of its records that contain the same incorrect information as soon as practical. A governmental entity may not disclose the record until it has amended it.
- (5) If the governmental entity denies the request, it shall:
 - (a) inform the requester in writing; and
 - (b) provide a brief statement giving its reasons for denying the request.
- (6)
 - (a) If a governmental entity denies a request to amend a record, the requester may submit a written statement contesting the information in the record.
 - (b) The governmental entity shall:
 - (i) file the requester's statement with the disputed record if the record is in a form such that the statement can accompany the record or make the statement accessible if the record is not in a form such that the statement can accompany the record; and
 - (ii) disclose the requester's statement along with the information in the record whenever the governmental entity discloses the disputed information.
- (7) The requester may appeal the denial of the request to amend a record pursuant to the Administrative Procedures Act or, if that act does not apply, to district court.
- (8) This section does not apply to records relating to title to real or personal property, medical records, judicial case files, or any other records that the governmental entity determines must be maintained in their original form to protect the public interest and to preserve the integrity of the record system.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-604 Retention and disposition of records.

- (1)
 - (a) Except for a governmental entity that is permitted to maintain the governmental entity's own retention schedules under Part 7, Applicability to Political Subdivisions, the Judiciary, the Legislature, and the Governor and Lieutenant Governor, each governmental entity shall file with the Records Management Committee created in Section 63A-12-112 a proposed schedule for the retention and disposition of each type of material that is defined as a record under this chapter.
 - (b) After a retention schedule is reviewed and approved by the Records Management Committee under Subsection 63A-12-113(1)(b), the governmental entity shall maintain and destroy records in accordance with the retention schedule.
 - (c) If a governmental entity subject to the provisions of this section has not received an approved retention schedule from the Records Management Committee for a specific type of material

that is defined as a record under this chapter, the general retention schedule maintained by the state archivist shall govern the retention and destruction of that type of material.

- (2) A retention schedule that is filed with or approved by the Records Management Committee under the requirements of this section is a public record.

Amended by Chapter 173, 2023 General Session

Amended by Chapter 516, 2023 General Session

Part 7

Applicability to Political Subdivisions, the Judiciary, the Legislature, and the Governor and Lieutenant Governor

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

- (1) As used in this section:

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

- (2)

- (a) Each political subdivision may adopt an ordinance or a policy applicable throughout its jurisdiction relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention, and amendment of records.
- (b) The ordinance or policy shall comply with the criteria set forth in this section.
- (c) If any political subdivision does not adopt and maintain an ordinance or policy, then that political subdivision is subject to this chapter.
- (d) Notwithstanding the adoption of an ordinance or policy, each political subdivision is subject to Part 1, General Provisions, Part 3, Classification, and Sections 63A-12-105, 63A-12-107, 63G-2-201, 63G-2-202, 63G-2-205, 63G-2-206, 63G-2-601, and 63G-2-602.
- (e) Every ordinance, policy, or amendment to the ordinance or policy shall be filed with the state archives no later than 30 days after its effective date.
- (f) The political subdivision shall also report to the state archives all retention schedules, and all designations and classifications applied to record series maintained by the political subdivision.
- (g) The report required by Subsection (2)(f) is notification to state archives of the political subdivision's retention schedules, designations, and classifications. The report is not subject to approval by state archives. If state archives determines that a different retention schedule is needed for state purposes, state archives shall notify the political subdivision of the state's retention schedule for the records and shall maintain the records if requested to do so under Subsection 63A-12-105(2).

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

- (a) provide standards for the classification and designation of the records of the political subdivision as public, private, controlled, or protected in accordance with Part 3, Classification;
- (b) require the classification of the records of the political subdivision in accordance with those standards;
- (c) provide guidelines for establishment of fees in accordance with Section 63G-2-203; and

- (d) provide standards for the management and retention of the records of the political subdivision comparable to Section 63A-12-103.
- (4)
 - (a) Each ordinance or policy shall establish access criteria, procedures, and response times for requests to inspect, obtain, or amend records of the political subdivision, and time limits for appeals consistent with this chapter.
 - (b) In establishing response times for access requests and time limits for appeals, the political subdivision may establish reasonable time frames different than those set out in Section 63G-2-204 and Part 4, Appeals, if it determines that the resources of the political subdivision are insufficient to meet the requirements of those sections.
- (5)
 - (a) A political subdivision shall establish an appeals process for persons aggrieved by classification, designation, or access decisions.
 - (b) A political subdivision's appeals process shall include a process for a requester or interested party to appeal an access denial to a person designated by the political subdivision as the chief administrative officer for purposes of an appeal under Section 63G-2-401.
 - (c)
 - (i) A political subdivision may establish an appeals board to decide an appeal of a decision of the chief administrative officer affirming an access denial.
 - (ii) An appeals board established by a political subdivision shall be composed of three members:
 - (A) one of whom shall be an employee of the political subdivision; and
 - (B) two of whom shall be members of the public who are not employed by or officials of a governmental entity, at least one of whom shall have professional experience with requesting or managing records.
 - (iii) If a political subdivision establishes an appeals board, any appeal of a decision of a chief administrative officer shall be made to the appeals board.
 - (iv) If a political subdivision does not establish an appeals board, the political subdivision's appeals process shall provide for an appeal of a chief administrative officer's decision to the State Records Committee, as provided in Section 63G-2-403.
- (6)
 - (a) A political subdivision or requester may appeal an appeals board decision:
 - (i) to the State Records Committee, as provided in Section 63G-2-403; or
 - (ii) by filing a petition for judicial review with the district court.
 - (b) The contents of a petition for judicial review under Subsection (6)(a)(ii) and the conduct of the proceeding shall be in accordance with Sections 63G-2-402 and 63G-2-404.
 - (c) A person who appeals an appeals board decision to the State Records Committee does not lose or waive the right to seek judicial review of the decision of the State Records Committee.
- (7) Any political subdivision that adopts an ordinance or policy under Subsection (1) shall forward to state archives a copy and summary description of the ordinance or policy.

Amended by Chapter 254, 2019 General Session

63G-2-702 Applicability to the judiciary.

- (1) The judiciary is subject to the provisions of this chapter except as provided in this section.
- (2)
 - (a) The judiciary is not subject to:
 - (i) Section 63G-2-209; or

- (ii) Part 4, Appeals, except as provided in Subsection (6).
 - (b) The judiciary is not subject to Part 5, State Records Committee, and Part 6, Collection of Information and Accuracy of Records.
 - (c) The judiciary is subject to only the following sections in Part 9, Public Associations: Sections 63A-12-105 and 63A-12-106.
- (3) The Judicial Council, the Administrative Office of the Courts, the courts, and other administrative units in the judicial branch shall designate and classify their records in accordance with Sections 63G-2-301 through 63G-2-305.
- (4) Substantially consistent with the provisions of this chapter, the Judicial Council shall:
- (a) make rules governing requests for access, fees, classification, designation, segregation, management, retention, denials and appeals of requests for access and retention, and amendment of judicial records;
 - (b) establish an appellate board to handle appeals from denials of requests for access and provide that a requester who is denied access by the appellate board may file a lawsuit in district court; and
 - (c) provide standards for the management and retention of judicial records substantially consistent with Section 63A-12-103.
- (5) The Judicial Council may:
- (a) establish a process for an administrative unit of the judicial branch to petition for relief from a person that the administrative unit claims is a vexatious requester; and
 - (b) establish an appellate board to hear a petition for relief from a person that an administrative unit of the judicial branch claims is a vexatious requester.
- (6) Rules governing appeals from denials of requests for access shall substantially comply with the time limits provided in Section 63G-2-204 and Part 4, Appeals.
- (7) Upon request, the state archivist shall:
- (a) assist with and advise concerning the establishment of a records management program in the judicial branch; and
 - (b) as required by the judiciary, provide program services similar to those available to the executive and legislative branches of government as provided in this chapter and Title 63A, Chapter 12, Division of Archives and Records Service and Management of Government Records.

Amended by Chapter 516, 2023 General Session

63G-2-703 Applicability to the Legislature.

- (1) The Legislature and its staff offices shall designate and classify records in accordance with Sections 63G-2-301 through 63G-2-305 as public, private, controlled, or protected.
- (2)
- (a) The Legislature and its staff offices are not subject to:
 - (i) Section 63G-2-203 or 63G-2-209; or
 - (ii) Part 4, Appeals, Part 5, State Records Committee, or Part 6, Collection of Information and Accuracy of Records.
 - (b) The Legislature is subject to only the following sections in Title 63A, Chapter 12, Division of Archives and Records Service and Management of Government Records: Sections 63A-12-102, 63A-12-102.5, and 63A-12-106.
- (3) The Legislature, through the Legislative Management Committee:
- (a)

- (i) shall establish policies to handle requests for classification, designation, fees, access, denials, segregation, appeals, management, retention, and amendment of records; and
- (ii) may establish an appellate board to hear appeals from denials of access; and
- (b) may establish:
 - (i) a process for determining that a person is a vexatious requester, including a process for an appeal from a determination that a person is a vexatious requester; and
 - (ii) appropriate limitations on a person determined to be a vexatious requester.
- (4) Policies shall include reasonable times for responding to access requests consistent with the provisions of Part 2, Access to Records, fees, and reasonable time limits for appeals.
- (5) Upon request, the state archivist shall:
 - (a) assist with and advise concerning the establishment of a records management program in the Legislature; and
 - (b) as required by the Legislature, provide program services similar to those available to the executive branch of government, as provided in this chapter and Title 63A, Chapter 12, Division of Archives and Records Service and Management of Government Records.

Amended by Chapter 291, 2023 General Session

Amended by Chapter 516, 2023 General Session

63G-2-704 Applicability to the governor and lieutenant governor.

- (1) The governor, the office of the governor, the lieutenant governor, and the office of the lieutenant governor shall designate and classify records in accordance with Sections 63G-2-301 through 63G-2-305 as public, private, controlled, or protected.
- (2)
 - (a) The governor, the office of the governor, the lieutenant governor, and the office of the lieutenant governor are not subject to:
 - (i) Section 63G-2-203;
 - (ii) Section 63G-2-209;
 - (iii) Section 63G-2-401; or
 - (iv) Part 6, Collection of Information and Accuracy of Records.
 - (b) The governor, the office of the governor, the lieutenant governor, and the office of the lieutenant governor are subject to only the following sections in Title 63A, Chapter 12, Division of Archives and Records Service and Management of Government Records:
 - (i) Section 63A-12-102; and
 - (ii) Section 63A-12-106.
- (3) The governor and lieutenant governor:
 - (a)
 - (i) shall establish policies to handle requests for classification, designation, fees, access, denials, segregation, appeals to the chief administrative officer, management, retention, and amendment of records; and
 - (ii) may establish an appellate board to hear appeals from denials of access; and
 - (b) may establish:
 - (i) a process for determining that a person is a vexatious requester, including a process for an appeal from a determination that a person is a vexatious requester; and
 - (ii) appropriate limitations on a person determined to be a vexatious requester.
- (4) Policies described in Subsection (3) shall include reasonable times for responding to access requests consistent with the provisions of Part 2, Access to Records, fees, and reasonable time limits for appeals.

(5) Upon request, the state archivist shall:

- (a) assist with and advise concerning the establishment of a records management program for the governor, the office of the governor, the lieutenant governor, and the office of the lieutenant governor; and
- (b) as required by the governor or lieutenant governor, provide program services as provided in this chapter and Title 63A, Chapter 12, Division of Archives and Records Service and Management of Government Records.

Enacted by Chapter 516, 2023 General Session

Part 8 Remedies

63G-2-801 Criminal penalties.

- (1)
 - (a) A public employee or other person who has lawful access to any private, controlled, or protected record under this chapter, and who intentionally discloses, provides a copy of, or improperly uses a private, controlled, or protected record knowing that the disclosure or use is prohibited under this chapter, is, except as provided in Subsection 53-5-708(1)(c), guilty of a class B misdemeanor.
 - (b) It is a defense to prosecution under Subsection (1)(a) that the actor used or released private, controlled, or protected information in the reasonable belief that the use or disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office, or misappropriation of public funds or property.
 - (c) It is a defense to prosecution under Subsection (1)(a) that the record could have lawfully been released to the recipient if it had been properly classified.
 - (d) It is a defense to prosecution under Subsection (1)(a) that the public employee or other person disclosed, provided, or used the record based on a good faith belief that the disclosure, provision, or use was in accordance with the law.
- (2)
 - (a) A person who by false pretenses, bribery, or theft, gains access to or obtains a copy of any private, controlled, or protected record to which the person is not legally entitled is guilty of a class B misdemeanor.
 - (b) No person shall be guilty under Subsection (2)(a) who receives the record, information, or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery, or theft.
- (3)
 - (a) A public employee who intentionally refuses to release a record, the disclosure of which the employee knows is required by law, is guilty of a class B misdemeanor.
 - (b) It is a defense to prosecution under Subsection (3)(a) that the public employee's failure to release the record was based on a good faith belief that the public employee was acting in accordance with the requirements of law.
 - (c) A public employee who intentionally refuses to release a record, the disclosure of which the employee knows is required by a final unappealed order from a government entity, the State Records Committee, or a court is guilty of a class B misdemeanor.

Amended by Chapter 254, 2019 General Session

63G-2-802 Injunction -- Attorney fees and costs.

- (1) As used in this section, "defending party" means:
 - (a) a governmental entity or political subdivision:
 - (i) whose access denial is the subject of a petition for judicial review under Section 63G-2-404; and
 - (ii) that defends the access denial in an action for judicial review under Section 63G-2-404; or
 - (b) a person, other than the governmental entity or political subdivision described in Subsection (1)(a), that is party to the action for judicial review in opposition to disclosure of the record that is the subject of judicial review.
- (2) A district court in this state may enjoin any governmental entity or political subdivision that violates or proposes to violate the provisions of this chapter.
- (3)
 - (a) A district court may assess against a defending party reasonable attorney fees and costs reasonably incurred in connection with a judicial appeal to determine whether a requester is entitled to access to records under a records request, if the requester substantially prevails.
 - (b) In determining whether to award attorney fees or costs under this section, the court shall consider:
 - (i) the public benefit derived from the case;
 - (ii) the nature of the requester's interest in the records; and
 - (iii) whether the defending party's actions had a reasonable basis.
 - (c) Attorney fees and costs shall not ordinarily be awarded if the purpose of the litigation is primarily to benefit the requester's financial or commercial interest.
- (4) Neither attorney fees nor costs may be awarded for fees or costs incurred during administrative proceedings.
- (5) Notwithstanding Subsection (3), a court may award attorney fees and costs incurred in connection with appeals to district courts under Subsection 63G-2-404(2) only if the attorney fees and costs were incurred 20 or more days after the requester provided:
 - (a) an adequate explanation in writing of the basis for the requester's position, regardless of whether the explanation is a part of or outside an administrative or court proceeding; and
 - (b) to the governmental entity, political subdivision, or other person against which the requester seeks an award of attorney fees and costs.
- (6) Except for the waiver of immunity in Subsection 63G-7-301(2)(e), a claim for attorney fees or costs as provided in this section is not subject to Chapter 7, Governmental Immunity Act of Utah.

Amended by Chapter 18, 2024 General Session

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

- (1) Neither the governmental entity, nor any officer or employee of the governmental entity, is liable for damages resulting from the release of a record where the person or government requesting the record presented evidence of authority to obtain the record even if it is subsequently determined that the requester had no authority.
- (2) Neither the governmental entity, nor any officer or employee of the governmental entity, is liable for damages arising from the negligent disclosure of records classified as private under Subsection 63G-2-302(1)(g) unless:
 - (a) the disclosure was of employment records maintained by the governmental entity; or

- (b) the current or former government employee had previously filed the notice required by Section 63G-2-303 and:
 - (i) the government entity did not take reasonable steps to preclude access or distribution of the record; or
 - (ii) the release of the record was otherwise willfully or grossly negligent.
- (3) A mailing from a government agency to an individual who has filed an application under Section 63G-2-303 is not a wrongful disclosure under this chapter or under Title 63A, Chapter 12, Division of Archives and Records Service and Management of Government Records.

Amended by Chapter 426, 2013 General Session

63G-2-804 Violation of provision of chapter -- Penalties for intentional mutilation or destruction -- Disciplinary action.

A governmental entity may take disciplinary action which may include suspension or discharge against any employee of the governmental entity who intentionally violates any provision of this chapter or Subsection 63A-12-105(3).

Amended by Chapter 44, 2009 General Session

**Part 9
Public Associations**

63G-2-901 Definitions -- Public associations subject to act.

- (1) As used in this section:
 - (a) "Public association" means any association, organization, or society whose members include elected or appointed public officials and for which public funds are used or paid to the public association for membership dues or for other support for the official's participation in the public association.
 - (b)
 - (i) "Public funds" means any money received by a public entity from appropriations, taxes, fees, interest, or other returns on investment.
 - (ii) "Public funds" does not include money donated to a public entity by a person or entity.
- (2) The budget documents and financial statements of a public association shall be released pursuant to a written request if 50% or more of the public association's:
 - (a) members are elected or appointed public officials from this state; and
 - (b) membership dues or other financial support come from public funds from this state.

Renumbered and Amended by Chapter 382, 2008 General Session

**Chapter 3
Utah Administrative Rulemaking Act**

**Part 1
General Provisions**

63G-3-101 Title.

This chapter is known as the "Utah Administrative Rulemaking Act."

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-102 Definitions.

As used in this chapter:

- (1) "Administrative record" means information an agency relies upon when making a rule under this chapter including:
 - (a) the proposed rule, change in the proposed rule, and the rule analysis form;
 - (b) the public comment received and recorded by the agency during the public comment period;
 - (c) the agency's response to the public comment;
 - (d) the agency's analysis of the public comment; and
 - (e) the agency's report of its decision-making process.
- (2) "Agency" means each state board, authority, commission, institution, department, division, officer, or other state government entity other than the Legislature, its committees, the political subdivisions of the state, or the courts, which is authorized or required by law to make rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or perform other similar actions or duties delegated by law.
- (3) "Bulletin" means the Utah State Bulletin.
- (4) "Catchline" means a short summary of each section, part, rule, or title of the code that follows the section, part, rule, or title reference placed before the text of the rule and serves the same function as boldface in legislation as described in Section 68-3-13.
- (5) "Code" means the body of all effective rules as compiled and organized by the office and entitled "Utah Administrative Code."
- (6) "Department" means the Department of Government Operations created in Section 63A-1-104.
- (7) "Director" means the director of the office.
- (8) "Effective" means operative and enforceable.
- (9) "Executive director" means the executive director of the department.
- (10) "File" means to submit a document to the office as prescribed by the office.
- (11) "Filing date" means the day and time the document is recorded as received by the office.
- (12) "Interested person" means any person affected by or interested in a proposed rule, amendment to an existing rule, or a nonsubstantive change made under Section 63G-3-402.
- (13) "Office" means the Office of Administrative Rules created in Section 63G-3-401.
- (14) "Order" means an agency action that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.
- (15) "Person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency.
- (16) "Publication" or "publish" means making a rule available to the public by including the rule or a summary of the rule in the bulletin.
- (17) "Publication date" means the inscribed date of the bulletin.
- (18) "Register" may include an electronic database.
- (19)
 - (a) "Rule" means an agency's written statement that:
 - (i) is explicitly or implicitly required by state or federal statute or other applicable law;
 - (ii) implements or interprets a state or federal legal mandate; and
 - (iii) applies to a class of persons or another agency.

- (b) "Rule" includes the amendment or repeal of an existing rule.
- (c) "Rule" does not mean:
 - (i) orders;
 - (ii) an agency's written statement that applies only to internal management and that does not restrict the legal rights of a public class of persons or another agency;
 - (iii) the governor's executive orders or proclamations;
 - (iv) opinions issued by the attorney general's office;
 - (v) declaratory rulings issued by the agency according to Section 63G-4-503 except as required by Section 63G-3-201;
 - (vi) rulings by an agency in adjudicative proceedings, except as required by Subsection 63G-3-201(6); or
 - (vii) an agency written statement that is in violation of any state or federal law.
- (20) "Rule analysis" means the format prescribed by the office to summarize and analyze rules.
- (21) "Small business" means a business employing fewer than 50 persons.
- (22) "Substantive change" means a change in a rule that affects the application or results of agency actions.

Amended by Chapter 344, 2021 General Session

Part 2

Circumstances Requiring Rulemaking - Status of Administrative Rules

63G-3-201 When rulemaking is required.

- (1) Each agency shall:
 - (a) maintain a current version of its rules; and
 - (b) make it available to the public for inspection during its regular business hours.
- (2) In addition to other rulemaking required by law, each agency shall make rules when agency action:
 - (a) authorizes, requires, or prohibits an action;
 - (b) provides or prohibits a material benefit;
 - (c) applies to a class of persons or another agency; and
 - (d) is explicitly or implicitly authorized by statute.
- (3) Rulemaking is also required when an agency issues a written interpretation of a state or federal legal mandate.
- (4) Rulemaking is not required when:
 - (a) agency action applies only to internal agency management, inmates or residents of a state correctional, diagnostic, or detention facility, persons under state legal custody, patients admitted to a state hospital, members of the state retirement system, or , except as provided in Title 53B, Chapter 27, Part 3, Student Civil Liberties Protection Act, students enrolled in a state education institution;
 - (b) a standardized agency manual applies only to internal fiscal or administrative details of governmental entities supervised under statute;
 - (c) an agency issues policy or other statements that are advisory, informative, or descriptive, and do not conform to the requirements of Subsections (2) and (3); or
 - (d) an agency makes nonsubstantive changes in a rule, except that the agency shall file all nonsubstantive changes in a rule with the office.

- (5)
 - (a) A rule shall enumerate any penalty authorized by statute that may result from its violation, subject to Subsections (5)(b) and (c).
 - (b) A violation of a rule may not be subject to the criminal penalty of a class C misdemeanor or greater offense, except as provided under Subsection (5)(c).
 - (c) A violation of a rule may be subject to a class C misdemeanor or greater criminal penalty under Subsection (5)(a) when:
 - (i) authorized by a specific state statute;
 - (ii) a state law and programs under that law are established in order for the state to obtain or maintain primacy over a federal program; or
 - (iii) state civil or criminal penalties established by state statute regarding the program are equivalent to or less than corresponding federal civil or criminal penalties.
- (6) Each agency shall enact rules incorporating the principles of law not already in its rules that are established by final adjudicative decisions within 120 days after the decision is announced in its cases.
- (7)
 - (a) Each agency may enact a rule that incorporates by reference:
 - (i) all or any part of another code, rule, or regulation that has been adopted by a federal agency, an agency or political subdivision of this state, an agency of another state, or by a nationally recognized organization or association;
 - (ii) state agency implementation plans mandated by the federal government for participation in the federal program;
 - (iii) lists, tables, illustrations, or similar materials that are subject to frequent change, fully described in the rule, and are available for public inspection; or
 - (iv) lists, tables, illustrations, or similar materials that the director determines are too expensive to reproduce in the administrative code.
 - (b) Rules incorporating materials by reference shall:
 - (i) be enacted according to the procedures outlined in this chapter;
 - (ii) state that the referenced material is incorporated by reference;
 - (iii) state the date, issue, or version of the material being incorporated; and
 - (iv) define specifically what material is incorporated by reference and identify any agency deviations from it.
 - (c) The agency shall identify any substantive changes in the material incorporated by reference by following the rulemaking procedures of this chapter.
 - (d) The agency shall maintain a complete and current copy of the referenced material available for public review at the agency and at the office.
- (8)
 - (a) This chapter is not intended to inhibit the exercise of agency discretion within the limits prescribed by statute or agency rule.
 - (b) An agency may enact a rule creating a justified exception to a rule.
- (9) An agency may obtain assistance from the attorney general to ensure that its rules meet legal and constitutional requirements.

Amended by Chapter 408, 2020 General Session

63G-3-202 Rules having the effect of law.

- (1) An agency's written statement is a rule if it conforms to the definition of a rule under Section 63G-3-102, but the written statement is not enforceable unless it is made as a rule in accordance with the requirements of this chapter.
- (2) An agency's written statement that is made as a rule in accordance with the requirements of this chapter is enforceable and has the effect of law.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 3

Rulemaking Procedures

63G-3-301 Rulemaking procedure.

- (1) An agency authorized to make rules is also authorized to amend or repeal those rules.
- (2) Except as provided in Sections 63G-3-303 and 63G-3-304, when making, amending, or repealing a rule agencies shall comply with:
 - (a) the requirements of this section;
 - (b) consistent procedures required by other statutes;
 - (c) applicable federal mandates; and
 - (d) rules made by the office to implement this chapter.
- (3) Subject to the requirements of this chapter, each agency shall develop and use flexible approaches in drafting rules that meet the needs of the agency and that involve persons affected by the agency's rules.
- (4)
 - (a) Each agency shall file the agency's proposed rule and rule analysis with the office.
 - (b) Rule amendments shall be marked with new language underlined and deleted language struck out.
 - (c)
 - (i) The office shall publish the information required under Subsection (8) on the rule analysis and the text of the proposed rule in the next issue of the bulletin.
 - (ii) For rule amendments, only the section or subsection of the rule being amended need be printed.
 - (iii) If the director determines that the rule is too long to publish, the office shall publish the rule analysis and shall publish the rule by reference to a copy on file with the office.
- (5) Before filing a rule with the office, the agency shall conduct a thorough analysis, consistent with the criteria established by the Governor's Office of Planning and Budget, of the fiscal impact a rule may have on businesses, which criteria may include:
 - (a) the type of industries that will be impacted by the rule, and for each identified industry, an estimate of the total number of businesses within the industry, and an estimate of the number of those businesses that are small businesses;
 - (b) the individual fiscal impact that would incur to a typical business for a one-year period;
 - (c) the aggregated total fiscal impact that would incur to all businesses within the state for a one-year period;
 - (d) the total cost that would incur to all impacted entities over a five-year period; and
 - (e) the department head's comments on the analysis.

- (6) If the agency reasonably expects that a proposed rule will have a measurable negative fiscal impact on small businesses, the agency shall consider, as allowed by federal law, each of the following methods of reducing the impact of the rule on small businesses:
 - (a) establishing less stringent compliance or reporting requirements for small businesses;
 - (b) establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
 - (c) consolidating or simplifying compliance or reporting requirements for small businesses;
 - (d) establishing performance standards for small businesses to replace design or operational standards required in the proposed rule; and
 - (e) exempting small businesses from all or any part of the requirements contained in the proposed rule.
- (7) If during the public comment period an agency receives comment that the proposed rule will cost small business more than one day's annual average gross receipts, and the agency had not previously performed the analysis in Subsection (6), the agency shall perform the analysis described in Subsection (6).
- (8) The rule analysis shall contain:
 - (a) a summary of the rule or change;
 - (b) the purpose of the rule or reason for the change;
 - (c) the statutory authority or federal requirement for the rule;
 - (d) the anticipated cost or savings to:
 - (i) the state budget;
 - (ii) local governments;
 - (iii) small businesses; and
 - (iv) persons other than small businesses, businesses, or local governmental entities;
 - (e) the compliance cost for affected persons;
 - (f) how interested persons may review the full text of the rule;
 - (g) how interested persons may present their views on the rule;
 - (h) the time and place of any scheduled public hearing;
 - (i) the name and telephone number of an agency employee who may be contacted about the rule;
 - (j) the name of the agency head or designee who authorized the rule;
 - (k) the date on which the rule may become effective following the public comment period;
 - (l) the agency's analysis on the fiscal impact of the rule as required under Subsection (5);
 - (m) any additional comments the department head may choose to submit regarding the fiscal impact the rule may have on businesses; and
 - (n) if applicable, a summary of the agency's efforts to comply with the requirements of Subsection (6).
- (9)
 - (a) For a rule being repealed and reenacted, the rule analysis shall contain a summary that generally includes the following:
 - (i) a summary of substantive provisions in the repealed rule which are eliminated from the enacted rule; and
 - (ii) a summary of new substantive provisions appearing only in the enacted rule.
 - (b) The summary required under this Subsection (9) is to aid in review and may not be used to contest any rule on the ground of noncompliance with the procedural requirements of this chapter.
- (10) A copy of the rule analysis shall be mailed to all persons who have made timely request of the agency for advance notice of the agency's rulemaking proceedings and to any other person

who, by statutory or federal mandate or in the judgment of the agency, should also receive notice.

(11)

- (a) Following the publication date, the agency shall allow at least 30 days for public comment on the rule.
- (b) The agency shall review and evaluate all public comments submitted in writing within the time period under Subsection (11)(a) or presented at public hearings conducted by the agency within the time period under Subsection (11)(a).

(12)

- (a) Except as provided in Sections 63G-3-303 and 63G-3-304, a proposed rule becomes effective on any date specified by the agency that is:
 - (i) no fewer than seven calendar days after the day on which the public comment period closes under Subsection (11); and
 - (ii) no more than 120 days after the day on which the rule is published.
- (b) The agency shall provide notice of the rule's effective date to the office in the form required by the office.
- (c) The notice of effective date may not provide for an effective date before the day on which the office receives the notice.
- (d) The office shall publish notice of the effective date of the rule in the next issue of the bulletin.
- (e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is not filed with the office within 120 days after the day on which the rule is published.

(13)

- (a) Except as provided in Subsection (13)(d), before an agency enacts a rule, the agency shall submit to the appropriations subcommittee and interim committee with jurisdiction over the agency the agency's proposed rule for review, if the proposed rule, over a three-year period, has a fiscal impact of more than:
 - (i) \$250,000 to a single person; or
 - (ii) \$7,500,000 to a group of persons.
- (b) An appropriations subcommittee or interim committee that reviews a rule submitted under Subsection (13)(a) shall:
 - (i) before the review, directly inform the chairs of the Rules Review and General Oversight Committee of the coming review, including the date, time, and place of the review; and
 - (ii) after the review, directly inform the chairs of the Rules Review and General Oversight Committee of the outcome of the review, including any recommendation.
- (c) An appropriations subcommittee or interim committee that reviews a rule submitted under Subsection (13)(a) may recommend to the Rules Review and General Oversight Committee that the Rules Review and General Oversight Committee not recommend reauthorization of the rule in the legislation described in Section 63G-3-502.
- (d) The requirement described in Subsection (13)(a) does not apply to:
 - (i) the State Tax Commission; or
 - (ii) the State Board of Education.

(14)

- (a) As used in this Subsection (14), "initiate rulemaking proceedings" means the filing, for the purposes of publication in accordance with Subsection (4), of an agency's proposed rule that is required by state statute.
- (b) A state agency shall initiate rulemaking proceedings no later than 180 days after the day on which the statutory provision that specifically requires the rulemaking takes effect, except under Subsection (14)(c).

- (c) When a statute is enacted that requires agency rulemaking and the affected agency already has rules in place that meet the statutory requirement, the agency shall submit the rules to the Rules Review and General Oversight Committee for review within 60 days after the day on which the statute requiring the rulemaking takes effect.
- (d) If a state agency does not initiate rulemaking proceedings in accordance with the time requirements in Subsection (14)(b), the state agency shall appear before the legislative Rules Review and General Oversight Committee and provide the reasons for the delay.

Amended by Chapter 178, 2024 General Session

Superseded 7/1/2024

63G-3-302 Public hearings.

- (1) Each agency may hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule during the public comment period.
- (2) Each agency shall hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule if:
 - (a) a public hearing is required by state or federal mandate;
 - (b)
 - (i) another state agency, 10 interested persons, or an interested association having not fewer than 10 members request a public hearing; and
 - (ii) the agency receives the request in writing not more than 15 days after the publication date of the proposed rule.
- (3) The agency shall hold the hearing:
 - (a) before the rule becomes effective; and
 - (b) no less than seven days nor more than 30 days after receipt of the request for hearing.

Renumbered and Amended by Chapter 382, 2008 General Session

Effective 7/1/2024

63G-3-302 Public hearings.

- (1) An agency may hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule during the public comment period.
- (2) Except as provided in Subsection (4), an agency shall hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule if:
 - (a) a public hearing is required by state or federal mandate;
 - (b)
 - (i) another state agency, 10 interested persons, or an interested association having not fewer than 10 members request a public hearing; and
 - (ii) the agency receives the request in writing not more than 15 days after the publication date of the proposed rule.
- (3) The agency shall hold the hearing:
 - (a) before the rule becomes effective; and
 - (b) no less than seven days nor more than 30 days after receipt of the request for hearing.
- (4) The Wildlife Board is not required to hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule unless required to hold a public hearing under Title 23A, Chapter 2, Part 3, Wildlife Board and Regional Councils.

Amended by Chapter 347, 2024 General Session

63G-3-303 Changes in rules.

- (1)
 - (a) To change a proposed rule already published in the bulletin, an agency shall file with the office:
 - (i) the text of the changed rule; and
 - (ii) a rule analysis containing a description of the change and the information required by Section 63G-3-301.
 - (b) A change to a proposed rule may not be filed more than 120 days after publication of the rule being changed.
 - (c) The office shall publish the rule analysis for the changed rule in the bulletin.
 - (d) The changed proposed rule and its associated proposed rule will become effective on a date specified by the agency, not less than 30 days or more than 120 days after publication of the last change in proposed rule.
 - (e) A changed proposed rule and its associated proposed rule lapse if a notice of effective date or another change to a proposed rule is not filed with the office within 120 days of publication of the last change in proposed rule.
- (2) If the rule change is nonsubstantive:
 - (a) the agency need not comply with the requirements of Subsection (1); and
 - (b) the agency shall notify the office of the change in writing.
- (3) If the rule is effective, the agency shall amend the rule according to the procedures specified in Section 63G-3-301.

Amended by Chapter 193, 2016 General Session

63G-3-304 Emergency rulemaking procedure.

- (1) All agencies shall comply with the rulemaking procedures of Section 63G-3-301 unless an agency finds that these procedures would:
 - (a) cause an imminent peril to the public health, safety, or welfare;
 - (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
 - (c) place the agency in violation of federal or state law.
- (2)
 - (a) When finding that its rule is excepted from regular rulemaking procedures by this section, the agency shall file with the office and the members of the Rules Review and General Oversight Committee:
 - (i) the text of the rule; and
 - (ii) a rule analysis that includes the specific reasons and justifications for its findings.
 - (b) The office shall publish the rule in the bulletin as provided in Subsection 63G-3-301(4).
 - (c) The agency shall notify interested persons as provided in Subsection 63G-3-301(10).
 - (d) Subject to Subsection 63G-3-502(4), the rule becomes effective for a period not exceeding 120 days on the date of filing or any later date designated in the rule.
- (3) If the agency intends the rule to be effective beyond 120 days, the agency shall also comply with the procedures of Section 63G-3-301.

Amended by Chapter 178, 2024 General Session

63G-3-305 Agency review of rules -- Schedule of filings -- Limited exemption for certain rules.

- (1) Each agency shall review each of its rules within five years after the rule's original effective date or within five years after the filing of the last five-year review, whichever is later.
- (2) An agency may consider any substantial review of a rule to be a five-year review if the agency also meets the requirements described in Subsection (3).
- (3) At the conclusion of its review, and no later than the deadline described in Subsection (1), the agency shall decide whether to continue, repeal, or amend and continue the rule and comply with Subsections (3)(a) through (c), as applicable.
 - (a) If the agency continues the rule, the agency shall file with the office a five-year notice of review and statement of continuation that includes:
 - (i) a concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule;
 - (ii) a summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule; and
 - (iii) a reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any.
 - (b) If the agency repeals the rule, the agency shall:
 - (i) comply with Section 63G-3-301; and
 - (ii) in the rule analysis described in Section 63G-3-301, state that the repeal is the result of the agency's five-year review under this section.
 - (c) If the agency amends and continues the rule, the agency shall comply with the requirements described in Section 63G-3-301 and file with the office the five-year notice of review and statement of continuation required in Subsection (3)(a).
- (4) The office shall publish a five-year notice of review and statement of continuation in the bulletin no later than one year after the deadline described in Subsection (1).
- (5)
 - (a) The office shall make a reasonable effort to notify an agency that a rule is due for review at least 180 days before the deadline described in Subsection (1).
 - (b) The office's failure to comply with the requirement described in Subsection (5)(a) does not exempt an agency from complying with any provision of this section.
- (6) If an agency finds that it will not meet the deadline established in Subsection (1):
 - (a) before the deadline described in Subsection (1), the agency may file one extension with the office indicating the reason for the extension; and
 - (b) the office shall publish notice of the extension in the bulletin in accordance with the office's publication schedule established by rule under Section 63G-3-402.
- (7) An extension permits the agency to comply with the requirements described in Subsections (1) and (3) up to 120 days after the deadline described in Subsection (1).
- (8)
 - (a) If an agency does not comply with the requirements described in Subsection (3), and does not file an extension under Subsection (6), the rule expires automatically on the day immediately after the date of the missed deadline.
 - (b) If an agency files an extension under Subsection (6) and does not comply with the requirements described in Subsection (3) within 120 days after the day on which the deadline described in Subsection (1) expires, the rule expires automatically on the day immediately after the date of the missed deadline.
- (9) After a rule expires under Subsection (8), the office shall:
 - (a) publish a notice in the next issue of the bulletin that the rule has expired and is no longer enforceable;
 - (b) remove the rule from the code; and

- (c) notify the agency that the rule has expired.
- (10) After a rule expires, an agency must comply with the requirements of Section 63G-3-301 to reenact the rule.

Amended by Chapter 193, 2016 General Session

Part 4 Office of Administrative Rules

63G-3-401 Office of Administrative Rules created -- Director.

- (1) There is created within the Department of Government Operations the Office of Administrative Rules, to be administered by a director.
- (2)
 - (a) The executive director shall appoint the director.
 - (b) The director shall hire, train, and supervise staff necessary for the office to carry out the provisions of this chapter.

Amended by Chapter 344, 2021 General Session

63G-3-402 Office of Administrative Rules -- Duties generally.

- (1) The office shall:
 - (a) record in a register the receipt of all agency rules, rule analysis forms, and notices of effective dates;
 - (b) make the register, copies of all proposed rules, and rulemaking documents available for public inspection;
 - (c) publish all proposed rules, rule analyses, notices of effective dates, and review notices in the bulletin at least monthly, except that the office may publish the complete text of any proposed rule that the director determines is too long to print or too expensive to publish by reference to the text maintained by the office;
 - (d) compile, format, number, and index all effective rules in an administrative code, and periodically publish that code and supplements or revisions to it;
 - (e) publish a digest of all rules and notices contained in the most recent bulletin;
 - (f) publish at least annually an index of all changes to the administrative code and the effective date of each change;
 - (g) print, or contract to print, all rulemaking publications the director determines necessary to implement this chapter;
 - (h) distribute without charge the bulletin and administrative code to state-designated repositories, the Rules Review and General Oversight Committee, the Office of Legislative Research and General Counsel, and the two houses of the Legislature;
 - (i) distribute without charge the digest and index to state legislators, agencies, political subdivisions on request, and the Office of Legislative Research and General Counsel;
 - (j) distribute, at prices covering publication costs, all paper rulemaking publications to all other requesting persons and agencies;
 - (k) provide agencies assistance in rulemaking;
 - (l) if the department operates the office as an internal service fund agency in accordance with Section 63A-1-109.5, submit to the Rate Committee established in Section 63A-1-114:

- (i) the proposed rate and fee schedule as required by Section 63A-1-114; and
 - (ii) other information or analysis requested by the Rate Committee;
 - (m) administer this chapter and require state agencies to comply with filing, publication, and hearing procedures; and
 - (n) make technological improvements to the rulemaking process, including improvements to automation and digital accessibility.
- (2) The office shall establish by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, all filing, publication, and hearing procedures necessary to make rules under this chapter.
- (3) The office may after notifying the agency make nonsubstantive changes to rules filed with the office or published in the bulletin or code by:
- (a) implementing a uniform system of formatting, punctuation, capitalization, organization, numbering, and wording;
 - (b) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;
 - (c) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;
 - (d) updating or correcting annotations associated with a section, part, rule, or title; and
 - (e) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.
- (4) In addition, the office may make the following nonsubstantive changes with the concurrence of the agency:
- (a) eliminate duplication within rules;
 - (b) eliminate obsolete and redundant words; and
 - (c) correct defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules.
- (5) For nonsubstantive changes made in accordance with Subsection (3) or (4) after publication of the rule in the bulletin, the office shall publish a list of nonsubstantive changes in the bulletin. For each nonsubstantive change, the list shall include:
- (a) the affected code citation;
 - (b) a brief description of the change; and
 - (c) the date the change was made.
- (6) All funds appropriated or collected for publishing the office's publications shall be nonlapsing.

Amended by Chapter 178, 2024 General Session

63G-3-403 Repeal and reenactment of Utah Administrative Code.

- (1) When the director determines that the Utah Administrative Code requires extensive revision and reorganization, the office may repeal the code and reenact a new code according to the requirements of this section.
- (2) The office may:
- (a) reorganize, reformat, and renumber the code;
 - (b) require each agency to review its rules and make any organizational or substantive changes according to the requirements of Section 63G-3-303; and
 - (c) require each agency to prepare a brief summary of all substantive changes made by the agency.
- (3) The office may make nonsubstantive changes in the code by:
- (a) adopting a uniform system of punctuation, capitalization, numbering, and wording;

- (b) eliminating duplication;
 - (c) correcting defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules;
 - (d) eliminating all obsolete or redundant words;
 - (e) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;
 - (f) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;
 - (g) updating or correcting annotations associated with a section, part, rule, or title; and
 - (h) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.
- (4)
- (a) To inform the public about the proposed code reenactment, the office shall publish in the bulletin:
 - (i) notice of the code reenactment;
 - (ii) the date, time, and place of a public hearing where members of the public may comment on the proposed reenactment of the code;
 - (iii) locations where the proposed reenactment of the code may be reviewed; and
 - (iv) agency summaries of substantive changes in the reenacted code.
 - (b) To inform the public about substantive changes in agency rules contained in the proposed reenactment, each agency shall:
 - (i) make the text of their reenacted rules available:
 - (A) for public review during regular business hours; and
 - (B) in an electronic version; and
 - (ii) comply with the requirements of Subsection 63G-3-301(10).
- (5) The office shall hold a public hearing on the proposed code reenactment no fewer than 30 days nor more than 45 days after the publication required by Subsection (4)(a).
- (6) The office shall distribute complete text of the proposed code reenactment without charge to:
- (a) state-designated repositories in Utah;
 - (b) the Rules Review and General Oversight Committee; and
 - (c) the Office of Legislative Research and General Counsel.
- (7) The former code is repealed and the reenacted code is effective at noon on a date designated by the office that is not fewer than 45 days nor more than 90 days after the publication date required by this section.
- (8) Repeal and reenactment of the code meets the requirements of Section 63G-3-305 for a review of all agency rules.

Amended by Chapter 178, 2024 General Session

Part 5 Legislative Oversight

63G-3-502 Legislative reauthorization of agency rules -- Extension of rules by governor.

- (1) All grants of rulemaking power from the Legislature to a state agency in any statute are made subject to the provisions of this section.
- (2)

- (a) Except as provided in Subsection (2)(b), every agency rule that is in effect on February 28 of any calendar year expires on May 1 of that year unless it has been reauthorized by the Legislature.
- (b) Notwithstanding the provisions of Subsection (2)(a), an agency's rules do not expire if:
 - (i) the rule is explicitly mandated by a federal law or regulation; or
 - (ii) a provision of Utah's constitution vests the agency with specific constitutional authority to regulate.
- (3)
 - (a) The Rules Review and General Oversight Committee shall have legislation prepared for the Legislature to consider the reauthorization of rules during its annual general session.
 - (b) The legislation shall be substantially in the following form: "All rules of Utah state agencies are reauthorized except for the following:".
 - (c) Before sending the legislation to the governor for the governor's action, the Rules Review and General Oversight Committee may send a letter to the governor and to the agency explaining specifically why the committee believes a rule should not be reauthorized.
 - (d) For the purpose of this section, the entire rule, a single section, or any complete paragraph of a rule may be excepted for reauthorization in the legislation considered by the Legislature.
- (4) The Rules Review and General Oversight Committee may have legislation prepared for consideration by the Legislature in the annual general session or a special session regarding any rule made according to emergency rulemaking procedures described in Section 63G-3-304.
- (5) The Legislature's reauthorization of a rule by legislation does not constitute legislative approval of the rule, nor is it admissible in any proceeding as evidence of legislative intent.
- (6)
 - (a) If an agency believes that a rule that has not been reauthorized by the Legislature or that will be allowed to expire should continue in full force and effect and is a rule within their authorized rulemaking power, the agency may seek the governor's declaration extending the rule beyond the expiration date.
 - (b) In seeking the extension, the agency shall submit a petition to the governor that affirmatively states:
 - (i) that the rule is necessary; and
 - (ii) a citation to the source of its authority to make the rule.
 - (c)
 - (i) If the governor finds that the necessity does exist, and that the agency has the authority to make the rule, the governor may declare the rule to be extended by publishing that declaration in the Administrative Rules Bulletin on or before April 15 of that year.
 - (ii) The declaration shall set forth the rule to be extended, the reasons the extension is necessary, and a citation to the source of the agency's authority to make the rule.
 - (d) If the legislation required by Subsection (3) fails to pass both houses of the Legislature or is found to have a technical legal defect preventing reauthorization of administrative rules intended to be reauthorized by the Legislature, the governor may declare all rules to be extended by publishing a single declaration in the Administrative Rules Bulletin on or before June 15 without meeting requirements of Subsections (6)(b) and (c).

Amended by Chapter 178, 2024 General Session

63G-3-503 Agency rules oversight.

Oversight of the rulemaking process is conducted by the Rules Review and General Oversight Committee created in Section 36-35-502.

Enacted by Chapter 178, 2024 General Session

Part 6 Judicial Review

63G-3-601 Interested parties -- Petition for agency action.

- (1) As used in this section, "initiate rulemaking proceedings" means the filing, for the purposes of publication in accordance with Subsection 63G-3-301(4), of an agency's proposed rule to implement a petition for the making, amendment, or repeal of a rule as provided in this section.
- (2) An interested person may petition an agency to request the making, amendment, or repeal of a rule.
- (3) The office shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition.
- (4) A statement shall accompany the proposed rule, or proposed amendment or repeal of a rule, demonstrating that the proposed action is within the jurisdiction of the agency and appropriate to the powers of the agency.
- (5) Within 60 days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rulemaking proceedings.
- (6)
 - (a) If the petition is submitted to a board that has been granted rulemaking authority by the Legislature, the board shall, within 45 days of the submission of the petition, place the petition on its agenda for review.
 - (b) Within 80 days of the submission of the petition, the board shall either:
 - (i) deny the petition in writing stating its reasons for denial; or
 - (ii) initiate rulemaking proceedings.
- (7) If the agency or board has not provided the petitioner written notice that the agency has denied the petition or initiated rulemaking proceedings within the time limitations specified in Subsection (5) or (6) respectively, the petitioner may seek a writ of mandamus in state district court.

Amended by Chapter 408, 2020 General Session

63G-3-602 Judicial challenge to administrative rules.

- (1)
 - (a) Any person aggrieved by a rule may obtain judicial review of the rule by filing a complaint with the county clerk in the district court where the person resides or in the district court in Salt Lake County.
 - (b) Any person aggrieved by an agency's failure to comply with Section 63G-3-201 may obtain judicial review of the agency's failure to comply by filing a complaint with the clerk of the district court where the person resides or in the district court in Salt Lake County.
- (2)

- (a) Except as provided in Subsection (2)(b), a person seeking judicial review under this section shall exhaust that person's administrative remedies by complying with the requirements of Section 63G-3-601 before filing the complaint.
- (b) When seeking judicial review of a rule, the person need not exhaust that person's administrative remedies if:
 - (i) less than six months has passed since the date that the rule became effective and the person had submitted verbal or written comments on the rule to the agency during the public comment period;
 - (ii) a statute granting rulemaking authority expressly exempts rules made under authority of that statute from compliance with Section 63G-3-601; or
 - (iii) compliance with Section 63G-3-601 would cause the person irreparable harm.
- (3)
 - (a) In addition to the information required by the Utah Rules of Civil Procedure, a complaint filed under this section shall contain:
 - (i) the name and mailing address of the plaintiff;
 - (ii) the name and mailing address of the defendant agency;
 - (iii) the name and mailing address of any other party joined in the action as a defendant;
 - (iv) the text of the rule or proposed rule, if any;
 - (v) an allegation that the person filing the complaint has either exhausted the administrative remedies by complying with Section 63G-3-601 or met the requirements for waiver of exhaustion of administrative remedies established by Subsection (2)(b);
 - (vi) the relief sought; and
 - (vii) factual and legal allegations supporting the relief sought.
 - (b)
 - (i) The plaintiff shall serve a summons and a copy of the complaint as required by the Utah Rules of Civil Procedure.
 - (ii) The defendants shall file a responsive pleading as required by the Utah Rules of Civil Procedures.
 - (iii) The agency shall file the administrative record of the rule, if any, with its responsive pleading.
- (4) The district court may grant relief to the petitioner by:
 - (a) declaring the rule invalid, if the court finds that:
 - (i) the rule violates constitutional or statutory law or the agency does not have legal authority to make the rule;
 - (ii) the rule is not supported by substantial evidence when viewed in light of the whole administrative record; or
 - (iii) the agency did not follow proper rulemaking procedure;
 - (b) declaring the rule nonapplicable to the petitioner;
 - (c) remanding the matter to the agency for compliance with proper rulemaking procedures or further fact-finding;
 - (d) ordering the agency to comply with Section 63G-3-201;
 - (e) issuing a judicial stay or injunction to enjoin the agency from illegal action or action that would cause irreparable harm to the petitioner; or
 - (f) any combination of Subsections (4)(a) through (e).
- (5) If the plaintiff meets the requirements of Subsection (2)(b), the district court may review and act on a complaint under this section whether or not the plaintiff has requested the agency review under Section 63G-3-601.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-603 Time for contesting a rule -- Statute of limitations.

- (1) A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this chapter shall commence within two years of the effective date of the rule.
- (2) A proceeding to contest any rule on the ground of not being supported by substantial evidence when viewed in light of the whole administrative record shall commence within four years of the effective date of the challenged action.
- (3) A proceeding to contest any rule on the basis that a change to the rule made under Subsection 63G-3-402(2) or (3) substantively changed the rule shall be commenced within two years of the date the change was made.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 7
Official Compilation of Administrative Rules

63G-3-701 Utah Administrative Code as official compilation of rules -- Judicial notice.

The code shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the administrative law of the state of Utah and as an authorized compilation of the administrative law of Utah. All courts shall take judicial notice of the code and its provisions.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-702 Utah Administrative Code -- Organization -- Official compilation.

- (1) The Utah Administrative Code shall be divided into three parts:
 - (a) titles, whose number shall begin with "R";
 - (b) rules; and
 - (c) sections.
- (2) All sections contained in the code are referenced by a three-part number indicating its location in the code.
- (3) The office shall maintain the official compilation of the code and is the state-designated repository for administrative rules. If a dispute arises in which there is more than one version of a rule, the latest effective version on file with the office is considered the correct, current version.

Amended by Chapter 193, 2016 General Session

Chapter 4
Administrative Procedures Act

Part 1
General Provisions

63G-4-101 Title.

This chapter is known as the "Administrative Procedures Act."

Renumbered and Amended by Chapter 382, 2008 General Session

Superseded 7/1/2024

63G-4-102 Scope and applicability of chapter.

- (1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state and govern:
 - (a) state agency action that determines the legal rights, duties, privileges, immunities, or other legal interests of an identifiable person, including agency action to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and
 - (b) judicial review of the action.
- (2) This chapter does not govern:
 - (a) the procedure for making agency rules, or judicial review of the procedure or rules;
 - (b) the issuance of a notice of a deficiency in the payment of a tax, the decision to waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the issuance of a tax assessment, except that this chapter governs an agency action commenced by a taxpayer or by another person authorized by law to contest the validity or correctness of the action;
 - (c) state agency action relating to extradition, to the granting of a pardon or parole, a commutation or termination of a sentence, or to the rescission, termination, or revocation of parole or probation, to the discipline of, resolution of a grievance of, supervision of, confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction of the Office of Substance Use and Mental Health, or a person on probation or parole, or judicial review of the action;
 - (d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a student or teacher in a school or educational institution, or judicial review of the action;
 - (e) an application for employment and internal personnel action within an agency concerning its own employees, or judicial review of the action;
 - (f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah Occupational Safety and Health Act, and Title 58, Occupations and Professions, except that this chapter governs an agency action commenced by the employer, licensee, or other person authorized by law to contest the validity or correctness of the citation or assessment;
 - (g) state agency action relating to management of state funds, the management and disposal of school and institutional trust land assets, and contracts for the purchase or sale of products, real property, supplies, goods, or services by or for the state, or by or for an agency of the state, except as provided in those contracts, or judicial review of the action;
 - (h) state agency action under Title 7, Chapter 1, Part 3, Powers and Duties of Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, and Chapter 7, Governmental Immunity Act of Utah, or judicial review of the action;
 - (i) the initial determination of a person's eligibility for unemployment benefits, the initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers'

- Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial determination of a person's unemployment tax liability;
- (j) state agency action relating to the distribution or award of a monetary grant to or between governmental units, or for research, development, or the arts, or judicial review of the action;
 - (k) the issuance of a notice of violation or order under Title 26B, Chapter 4, Part 1, Utah Emergency Medical Services System, Title 19, Chapter 2, Air Conservation Act, Title 19, Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19, Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, except that this chapter governs an agency action commenced by a person authorized by law to contest the validity or correctness of the notice or order;
 - (l) state agency action, to the extent required by federal statute or regulation, to be conducted according to federal procedures;
 - (m) the initial determination of a person's eligibility for government or public assistance benefits;
 - (n) state agency action relating to wildlife licenses, permits, tags, and certificates of registration;
 - (o) a license for use of state recreational facilities;
 - (p) state agency action under Chapter 2, Government Records Access and Management Act, except as provided in Section 63G-2-603;
 - (q) state agency action relating to the collection of water commissioner fees and delinquency penalties, or judicial review of the action;
 - (r) state agency action relating to the installation, maintenance, and repair of headgates, caps, valves, or other water controlling works and weirs, flumes, meters, or other water measuring devices, or judicial review of the action;
 - (s) the issuance and enforcement of an initial order under Section 73-2-25;
 - (t)
 - (i) a hearing conducted by the Division of Securities under Section 61-1-11.1; and
 - (ii) an action taken by the Division of Securities under a hearing conducted under Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange of securities described in Subsection 61-1-11.1(1);
 - (u) state agency action relating to water well driller licenses, water well drilling permits, water well driller registration, or water well drilling construction standards, or judicial review of the action;
 - (v) the issuance of a determination and order under Title 34A, Chapter 5, Utah Antidiscrimination Act;
 - (w) state environmental studies and related decisions by the Department of Transportation approving state or locally funded projects, or judicial review of the action;
 - (x) the suspension of operations under Subsection 32B-1-304(3);
 - (y) the issuance of a determination of violation by the Governor's Office of Economic Opportunity under Section 11-41-104; or
 - (z) a challenge to an aspect of a distribution management plan under Section 73-33-202.
- (3) This chapter does not affect a legal remedy otherwise available to:
- (a) compel an agency to take action; or
 - (b) challenge an agency's rule.
- (4) This chapter does not preclude an agency, prior to the beginning of an adjudicative proceeding, or the presiding officer during an adjudicative proceeding from:
- (a) requesting or ordering a conference with parties and interested persons to:
 - (i) encourage settlement;
 - (ii) clarify the issues;

- (iii) simplify the evidence;
 - (iv) facilitate discovery; or
 - (v) expedite the proceeding; or
 - (b) granting a timely motion to dismiss or for summary judgment if the requirements of Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.
- (5)
- (a) A declaratory proceeding authorized by Section 63G-4-503 is not governed by this chapter, except as explicitly provided in that section.
 - (b) Judicial review of a declaratory proceeding authorized by Section 63G-4-503 is governed by this chapter.
- (6) This chapter does not preclude an agency from enacting a rule affecting or governing an adjudicative proceeding or from following the rule, if the rule is enacted according to the procedures outlined in Chapter 3, Utah Administrative Rulemaking Act, and if the rule conforms to the requirements of this chapter.
- (7)
- (a) If the attorney general issues a written determination that a provision of this chapter would result in the denial of funds or services to an agency of the state from the federal government, the applicability of the provision to that agency shall be suspended to the extent necessary to prevent the denial.
 - (b) The attorney general shall report the suspension to the Legislature at its next session.
- (8) Nothing in this chapter may be interpreted to provide an independent basis for jurisdiction to review final agency action.
- (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good cause shown, from lengthening or shortening a time period prescribed in this chapter, except the time period established for judicial review.
- (10) Notwithstanding any other provision of this section, this chapter does not apply to a special adjudicative proceeding, as defined in Section 19-1-301.5, except to the extent expressly provided in Section 19-1-301.5.
- (11) Subsection (2)(w), regarding action taken based on state environmental studies and policies of the Department of Transportation, applies to any claim for which a court of competent jurisdiction has not issued a final unappealable judgment or order before May 14, 2019.

Amended by Chapter 25, 2024 General Session

Effective 7/1/2024

63G-4-102 Scope and applicability of chapter.

- (1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state and govern:
 - (a) state agency action that determines the legal rights, duties, privileges, immunities, or other legal interests of an identifiable person, including agency action to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and
 - (b) judicial review of the action.
- (2) This chapter does not govern:
 - (a) the procedure for making agency rules, or judicial review of the procedure or rules;
 - (b) the issuance of a notice of a deficiency in the payment of a tax, the decision to waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the issuance

of a tax assessment, except that this chapter governs an agency action commenced by a taxpayer or by another person authorized by law to contest the validity or correctness of the action;

- (c) state agency action relating to extradition, to the granting of a pardon or parole, a commutation or termination of a sentence, or to the rescission, termination, or revocation of parole or probation, to the discipline of, resolution of a grievance of, supervision of, confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction of the Office of Substance Use and Mental Health, or a person on probation or parole, or judicial review of the action;
- (d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a student or teacher in a school or educational institution, or judicial review of the action;
- (e) an application for employment and internal personnel action within an agency concerning its own employees, or judicial review of the action;
- (f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah Occupational Safety and Health Act, and Title 58, Occupations and Professions, except that this chapter governs an agency action commenced by the employer, licensee, or other person authorized by law to contest the validity or correctness of the citation or assessment;
- (g) state agency action relating to management of state funds, the management and disposal of school and institutional trust land assets, and contracts for the purchase or sale of products, real property, supplies, goods, or services by or for the state, or by or for an agency of the state, except as provided in those contracts, or judicial review of the action;
- (h) state agency action under Title 7, Chapter 1, Part 3, Powers and Duties of Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, and Chapter 7, Governmental Immunity Act of Utah, or judicial review of the action;
- (i) the initial determination of a person's eligibility for unemployment benefits, the initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial determination of a person's unemployment tax liability;
- (j) state agency action relating to the distribution or award of a monetary grant to or between governmental units, or for research, development, or the arts, or judicial review of the action;
- (k) the issuance of a notice of violation or order under Title 53, Chapter 2d, Emergency Medical Services Act, Title 19, Chapter 2, Air Conservation Act, Title 19, Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19, Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, except that this chapter governs an agency action commenced by a person authorized by law to contest the validity or correctness of the notice or order;
- (l) state agency action, to the extent required by federal statute or regulation, to be conducted according to federal procedures;
- (m) the initial determination of a person's eligibility for government or public assistance benefits;
- (n) state agency action relating to wildlife licenses, permits, tags, and certificates of registration;
- (o) a license for use of state recreational facilities;
- (p) state agency action under Chapter 2, Government Records Access and Management Act, except as provided in Section 63G-2-603;

- (q) state agency action relating to the collection of water commissioner fees and delinquency penalties, or judicial review of the action;
 - (r) state agency action relating to the installation, maintenance, and repair of headgates, caps, valves, or other water controlling works and weirs, flumes, meters, or other water measuring devices, or judicial review of the action;
 - (s) the issuance and enforcement of an initial order under Section 73-2-25;
 - (t)
 - (i) a hearing conducted by the Division of Securities under Section 61-1-11.1; and
 - (ii) an action taken by the Division of Securities under a hearing conducted under Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange of securities described in Subsection 61-1-11.1(1);
 - (u) state agency action relating to water well driller licenses, water well drilling permits, water well driller registration, or water well drilling construction standards, or judicial review of the action;
 - (v) the issuance of a determination and order under Title 34A, Chapter 5, Utah Antidiscrimination Act;
 - (w) state environmental studies and related decisions by the Department of Transportation approving state or locally funded projects, or judicial review of the action;
 - (x) the suspension of operations under Subsection 32B-1-304(3);
 - (y) the issuance of a determination of violation by the Governor's Office of Economic Opportunity under Section 11-41-104; or
 - (z) a challenge to an aspect of a distribution management plan under Section 73-33-202.
- (3) This chapter does not affect a legal remedy otherwise available to:
- (a) compel an agency to take action; or
 - (b) challenge an agency's rule.
- (4) This chapter does not preclude an agency, prior to the beginning of an adjudicative proceeding, or the presiding officer during an adjudicative proceeding from:
- (a) requesting or ordering a conference with parties and interested persons to:
 - (i) encourage settlement;
 - (ii) clarify the issues;
 - (iii) simplify the evidence;
 - (iv) facilitate discovery; or
 - (v) expedite the proceeding; or
 - (b) granting a timely motion to dismiss or for summary judgment if the requirements of Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.
- (5)
- (a) A declaratory proceeding authorized by Section 63G-4-503 is not governed by this chapter, except as explicitly provided in that section.
 - (b) Judicial review of a declaratory proceeding authorized by Section 63G-4-503 is governed by this chapter.
- (6) This chapter does not preclude an agency from enacting a rule affecting or governing an adjudicative proceeding or from following the rule, if the rule is enacted according to the procedures outlined in Chapter 3, Utah Administrative Rulemaking Act, and if the rule conforms to the requirements of this chapter.
- (7)
- (a) If the attorney general issues a written determination that a provision of this chapter would result in the denial of funds or services to an agency of the state from the federal government,

the applicability of the provision to that agency shall be suspended to the extent necessary to prevent the denial.

- (b) The attorney general shall report the suspension to the Legislature at its next session.
- (8) Nothing in this chapter may be interpreted to provide an independent basis for jurisdiction to review final agency action.
- (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good cause shown, from lengthening or shortening a time period prescribed in this chapter, except the time period established for judicial review.
- (10) Notwithstanding any other provision of this section, this chapter does not apply to a special adjudicative proceeding, as defined in Section 19-1-301.5, except to the extent expressly provided in Section 19-1-301.5.
- (11) Subsection (2)(w), regarding action taken based on state environmental studies and policies of the Department of Transportation, applies to any claim for which a court of competent jurisdiction has not issued a final unappealable judgment or order before May 14, 2019.

Amended by Chapter 147, 2024 General Session

63G-4-103 Definitions.

- (1) As used in this chapter:
 - (a) "Adjudicative proceeding" means an agency action or proceeding described in Section 63G-4-102.
 - (b) "Agency" means a board, commission, department, division, officer, council, office, committee, bureau, or other administrative unit of this state, including the agency head, agency employees, or other persons acting on behalf of or under the authority of the agency head, but does not mean the Legislature, the courts, the governor, any political subdivision of the state, or any administrative unit of a political subdivision of the state.
 - (c) "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by statute.
 - (d) "Declaratory proceeding" means a proceeding authorized and governed by Section 63G-4-503.
 - (e) "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by statute.
 - (f) "Party" means the agency or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the presiding officer to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.
 - (g) "Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.
 - (h)
 - (i) "Presiding officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding.
 - (ii) If fairness to the parties is not compromised, an agency may substitute one presiding officer for another during any proceeding.
 - (iii) A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.

- (i) "Respondent" means a person against whom an adjudicative proceeding is initiated, whether by an agency or any other person.
 - (j) "Superior agency" means an agency required or authorized by law to review the orders of another agency.
- (2) This section does not prohibit an agency from designating by rule the names or titles of the agency head or the presiding officers with responsibility for adjudicative proceedings before the agency.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-104 Bases for certain recommendations and decisions limited.

- (1) Except as provided in Subsection (2), no agency may recommend or rule on the custody, placement, including foster placement, or other disposition alternative for a minor, or the termination of parental rights, based on the fact that a parent or guardian of the minor lawfully does one or more of the following:
- (a) legally possesses or uses a firearm or other weapon;
 - (b) espouses particular religious beliefs; or
 - (c) schools the minor or other minors outside the public education system or is otherwise sympathetic to schooling a minor outside the public education system.
- (2) Subsection (1) does not prohibit a recommendation or ruling based on the compatibility of a minor with a particular custody, placement, or other disposition alternative as determined by the presence of any of the factors in Subsections (1)(a) through (1)(c).

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-105 Transition procedures.

- (1) The procedures for agency action, agency review, and judicial review contained in this chapter are applicable to all agency adjudicative proceedings commenced by or before an agency on or after January 1, 1988.
- (2) Statutes and rules governing agency action, agency review, and judicial review that are in effect on December 31, 1987, govern all agency adjudicative proceedings commenced by or before an agency on or before December 31, 1987, even if those proceedings are still pending before an agency or a court on January 1, 1988.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-106 Access to information on state-controlled websites.

- (1) As used in this section and Sections 63G-4-107 and 63G-4-108:
- (a) "Administrative disciplinary action" means, subject to the limitations described in Section 63G-4-102, state agency action against the interest of an individual that affects a legal right, duty, privilege, immunity, or other legal interest of an individual, including agency action to deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license.
 - (b) "Record of administrative disciplinary action" means a notice, request, complaint, report, order, or other information related to an administrative disciplinary action.
 - (c) "State-controlled website" means a website:
 - (i) operated by:
 - (A) an agency; or

- (B) a third party pursuant to a contract with an agency under which the agency controls the data available to the public; and
- (ii) that includes personally identifiable information.
- (2) Unless otherwise required by federal law, if an agency maintains, on a state-controlled website available to the public, a record of administrative disciplinary action, the agency shall remove the record of administrative disciplinary action from public access on the state-controlled website by no later than 10 years from the date:
 - (a) a final order related to the administrative disciplinary action was issued; or
 - (b) the administrative disciplinary action was commenced, if no final order was issued related to the administrative disciplinary action.
- (3) Notwithstanding Subsection (2):
 - (a) a record of administrative disciplinary action issued in accordance with this chapter shall maintain its record classification pursuant to Subsection 63G-2-301(2)(c) or (3)(t); and
 - (b) a person may make a request for the record of administrative disciplinary action in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

Enacted by Chapter 312, 2016 General Session

63G-4-107 Petition to remove agency action from public access.

- (1) An individual may petition the agency that maintains, on a state-controlled website available to the public, a record of administrative disciplinary action, to remove the record of administrative disciplinary action from public access on the state-controlled website, if:
 - (a)
 - (i) five years have passed since:
 - (A) the date the final order was issued; or
 - (B) if no final order was issued, the date the administrative disciplinary action was commenced; or
 - (ii) the individual has obtained a criminal expungement order under Title 77, Chapter 40a, Expungement of Criminal Records, for the individual's criminal records related to the same incident or conviction upon which the administrative disciplinary action was based;
 - (b) the individual has successfully completed all action required by the agency relating to the administrative disciplinary action within the time frame set forth in the final order, or if no time frame is specified in the final order, within the time frame set forth in Title 63G, Chapter 4, Administrative Procedures Act;
 - (c) from the time that the original administrative disciplinary action was filed, the individual has not violated the same statutory provisions or administrative rules related to those statutory provisions that resulted in the original administrative disciplinary action; and
 - (d) the individual pays an application fee determined by the agency in accordance with Section 63J-1-504.
- (2) The individual petitioning the agency under Subsection (1) shall provide the agency with a written request containing the following information:
 - (a) the petitioner's full name, address, telephone number, and date of birth;
 - (b) the information the petitioner seeks to remove from public access; and
 - (c) an affidavit certifying that the petitioner is in compliance with the provisions of Subsection (1).
- (3) Within 30 days of receiving the documents and information described in Subsection (2):
 - (a) the agency shall review the petition and all documents submitted with the petition to determine whether the petitioner has met the requirements of Subsections (1) and (2); and

- (b) if the agency determines that the petitioner has met the requirements of Subsections (1) and (2), the agency shall immediately remove the record of administrative disciplinary action from public access on the state-controlled website.
- (4) Notwithstanding the provisions of Subsection (3), an agency is not required to remove a recording, written minutes, or other electronic information from the Utah Public Notice Website, created under Section 63A-16-601, if the recording, written minutes, or other electronic information is required to be available to the public on the Utah Public Notice Website under the provisions of Title 52, Chapter 4, Open and Public Meetings Act.

Amended by Chapter 194, 2024 General Session

63G-4-108 Impact on duty to disclose an administrative action.

The removal of a record of an administrative disciplinary action from a state-controlled website in accordance with Section 63G-4-106 or 63G-4-107 does not affect any separate legal duty or requirement that the subject of the administrative disciplinary action may have to disclose the action.

Enacted by Chapter 312, 2016 General Session

Part 2 Adjudicative Proceedings

63G-4-201 Commencement of adjudicative proceedings.

- (1) Except as otherwise permitted by Section 63G-4-502, all adjudicative proceedings shall be commenced by either:
 - (a) a notice of agency action, if proceedings are commenced by the agency; or
 - (b) a request for agency action, if proceedings are commenced by persons other than the agency.
- (2) A notice of agency action shall be filed and served according to the following requirements:
 - (a) The notice of agency action shall be in writing, signed by a presiding officer, and shall include:
 - (i) the names and mailing addresses of all persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the agency;
 - (ii) the agency's file number or other reference number;
 - (iii) the name of the adjudicative proceeding;
 - (iv) the date that the notice of agency action was mailed;
 - (v) a statement of whether the adjudicative proceeding is to be conducted informally according to the provisions of rules adopted under Sections 63G-4-202 and 63G-4-203, or formally according to the provisions of Sections 63G-4-204 through 63G-4-209;
 - (vi) if the adjudicative proceeding is to be formal, a statement that each respondent must file a written response within 30 days of the mailing date of the notice of agency action;
 - (vii) if the adjudicative proceeding is to be formal, or if a hearing is required by statute or rule, a statement of the time and place of any scheduled hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;

- (viii) if the adjudicative proceeding is to be informal and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed by rule, a statement that the parties may request a hearing within the time provided by the agency's rules;
 - (ix) a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;
 - (x) the name, title, mailing address, and telephone number of the presiding officer; and
 - (xi) a statement of the purpose of the adjudicative proceeding and, to the extent known by the presiding officer, the questions to be decided.
- (b) When adjudicative proceedings are commenced by the agency, the agency shall:
- (i) mail the notice of agency action to each party;
 - (ii) publish the notice of agency action, if required by statute; and
 - (iii) mail the notice of agency action to any other person who has a right to notice under statute or rule.
- (3)
- (a) Where the law applicable to the agency permits persons other than the agency to initiate adjudicative proceedings, that person's request for agency action shall be in writing and signed by the person invoking the jurisdiction of the agency, or by that person's representative, and shall include:
- (i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;
 - (ii) the agency's file number or other reference number, if known;
 - (iii) the date that the request for agency action was mailed;
 - (iv) a statement of the legal authority and jurisdiction under which agency action is requested;
 - (v) a statement of the relief or action sought from the agency; and
 - (vi) a statement of the facts and reasons forming the basis for relief or agency action.
- (b) The person requesting agency action shall file the request with the agency and shall mail a copy to each person known to have a direct interest in the requested agency action.
- (c) An agency may, by rule, prescribe one or more forms eliciting the information required by Subsection (3)(a) to serve as the request for agency action when completed and filed by the person requesting agency action.
- (d) The presiding officer shall promptly review a request for agency action and shall:
- (i) notify the requesting party in writing that the request is granted and that the adjudicative proceeding is completed;
 - (ii) notify the requesting party in writing that the request is denied and, if the proceeding is a formal adjudicative proceeding, that the party may request a hearing before the agency to challenge the denial; or
 - (iii) notify the requesting party that further proceedings are required to determine the agency's response to the request.
- (e)
- (i) Any notice required by Subsection (3)(d)(ii) shall contain the information required by Subsection 63G-4-203(1)(i) in addition to disclosure required by Subsection (3)(d)(ii).
 - (ii) The agency shall mail any notice required by Subsection (3)(d) to all parties, except that any notice required by Subsection (3)(d)(iii) may be published when publication is required by statute.
 - (iii) The notice required by Subsection (3)(d)(iii) shall:
 - (A) give the agency's file number or other reference number;
 - (B) give the name of the proceeding;

- (C) designate whether the proceeding is one of a category to be conducted informally according to the provisions of rules enacted under Sections 63G-4-202 and 63G-4-203, with citation to the applicable rule authorizing that designation, or formally according to Sections 63G-4-204 through 63G-4-209;
 - (D) in the case of a formal adjudicative proceeding, and where respondent parties are known, state that a written response must be filed within 30 days of the date of the agency's notice if mailed, or within 30 days of the last publication date of the agency's notice, if published;
 - (E) if the adjudicative proceeding is to be formal, or if a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in a scheduled and noticed hearing may be held in default;
 - (F) if the adjudicative proceeding is to be informal, and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed by rule, state the parties' right to request a hearing and the time within which a hearing may be requested under the agency's rules; and
 - (G) give the name, title, mailing address, and telephone number of the presiding officer.
- (4) When initial agency determinations or actions are not governed by this chapter, but agency and judicial review of those initial determinations or actions are subject to the provisions of this chapter, the request for agency action seeking review must be filed with the agency within the time prescribed by the agency's rules.
- (5) For designated classes of adjudicative proceedings, an agency may, by rule, provide for a longer response time than allowed by this section, and may provide for a shorter response time if required or permitted by applicable federal law.
- (6) Unless the agency provides otherwise by rule or order, an application for a package agency, license, permit, or certificate of approval filed under authority of Title 32B, Alcoholic Beverage Control Act, is not considered to be a request for agency action under this chapter.
- (7) If the purpose of the adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the agency may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege.

Amended by Chapter 276, 2010 General Session

63G-4-202 Designation of adjudicative proceedings as informal -- Standards -- Undesignated proceedings formal.

- (1) The agency may, by rule, designate categories of adjudicative proceedings to be conducted informally according to the procedures set forth in rules enacted under the authority of this chapter if:
- (a) the use of the informal procedures does not violate any procedural requirement imposed by a statute other than this chapter;
 - (b) in the view of the agency, the rights of the parties to the proceedings will be reasonably protected by the informal procedures;
 - (c) in the view of the agency, the agency's administrative efficiency will be enhanced by categorizations; and
 - (d) the cost of formal adjudicative proceedings outweighs the potential benefits to the public of a formal adjudicative proceeding.
- (2) Subject to the provisions of Subsection (3), all agency adjudicative proceedings not specifically designated as informal proceedings by the agency's rules shall be conducted formally in accordance with the requirements of this chapter.

- (3) Any time before a final order is issued in any adjudicative proceeding, the presiding officer may convert a formal adjudicative proceeding to an informal adjudicative proceeding, or an informal adjudicative proceeding to a formal adjudicative proceeding if:
- (a) conversion of the proceeding is in the public interest; and
 - (b) conversion of the proceeding does not unfairly prejudice the rights of any party.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-203 Procedures for informal adjudicative proceedings.

- (1) If an agency enacts rules designating one or more categories of adjudicative proceedings as informal adjudicative proceedings, the agency shall, by rule, prescribe procedures for informal adjudicative proceedings that include the following:
- (a) Unless the agency by rule provides for and requires a response, no answer or other pleading responsive to the allegations contained in the notice of agency action or the request for agency action need be filed.
 - (b) The agency shall hold a hearing if a hearing is required by statute or rule, or if a hearing is permitted by rule and is requested by a party within the time prescribed by rule.
 - (c) In any hearing, the parties named in the notice of agency action or in the request for agency action shall be permitted to testify, present evidence, and comment on the issues.
 - (d) Hearings will be held only after timely notice to all parties.
 - (e) Discovery is prohibited, but the agency may issue subpoenas or other orders to compel production of necessary evidence.
 - (f) All parties shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, to the extent permitted by law.
 - (g) Intervention is prohibited, except that the agency may enact rules permitting intervention where a federal statute or rule requires that a state permit intervention.
 - (h) All hearings shall be open to all parties.
 - (i) Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing that states the following:
 - (i) the decision;
 - (ii) the reasons for the decision;
 - (iii) a notice of any right of administrative or judicial review available to the parties; and
 - (iv) the time limits for filing an appeal or requesting a review.
 - (j) The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at any hearings.
 - (k) A copy of the presiding officer's order shall be promptly mailed to each of the parties.
- (2)
- (a) The agency may record any hearing.
 - (b) Any party, at the party's own expense, may have a reporter approved by the agency prepare a transcript from the agency's record of the hearing.
- (3) Nothing in this section restricts or precludes any investigative right or power given to an agency by another statute.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-204 Procedures for formal adjudicative proceedings -- Responsive pleadings.

- (1) In all formal adjudicative proceedings, unless modified by rule according to Subsection 63G-4-201(5), the respondent, if any, shall file and serve a written response signed by the

respondent or the respondent's representative within 30 days of the mailing date or last date of publication of the notice of agency action or the notice under Subsection 63G-4-201(3)(d), which shall include:

- (a) the agency's file number or other reference number;
 - (b) the name of the adjudicative proceeding;
 - (c) a statement of the relief that the respondent seeks;
 - (d) a statement of the facts; and
 - (e) a statement summarizing the reasons that the relief requested should be granted.
- (2) The respondent shall send a copy of the response filed under Subsection (1) to each party.
- (3) The presiding officer, or the agency by rule, may permit or require pleadings in addition to the notice of agency action, the request for agency action, and the response. All documents permitted or required to be filed shall be filed with the agency and one copy shall be sent to each party.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-205 Procedures for formal adjudicative proceedings -- Discovery and subpoenas.

- (1) In formal adjudicative proceedings, the agency may, by rule, prescribe means of discovery adequate to permit the parties to obtain all relevant information necessary to support their claims or defenses. If the agency does not enact rules under this section, the parties may conduct discovery according to the Utah Rules of Civil Procedure.
- (2) Subpoenas and other orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer on the presiding officer's own motion.
- (3) Nothing in this section restricts or precludes any investigative right or power given to an agency by another statute.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-206 Procedures for formal adjudicative proceedings -- Hearing procedure.

- (1) Except as provided in Subsections 63G-4-201(3)(d)(i) and (ii), in all formal adjudicative proceedings, a hearing shall be conducted as follows:
 - (a) The presiding officer shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions.
 - (b) On the presiding officer's own motion or upon objection by a party, the presiding officer:
 - (i) may exclude evidence that is irrelevant, immaterial, or unduly repetitious;
 - (ii) shall exclude evidence privileged in the courts of Utah;
 - (iii) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document; and
 - (iv) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge.
 - (c) The presiding officer may not exclude evidence solely because it is hearsay.
 - (d) The presiding officer shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.
 - (e) The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

- (f) All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.
 - (g) The hearing shall be recorded at the agency's expense.
 - (h) Any party, at the party's own expense, may have a person approved by the agency prepare a transcript of the hearing, subject to any restrictions that the agency is permitted by statute to impose to protect confidential information disclosed at the hearing.
 - (i) All hearings shall be open to all parties.
- (2) This section does not preclude the presiding officer from taking appropriate measures necessary to preserve the integrity of the hearing.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-207 Procedures for formal adjudicative proceedings -- Intervention.

- (1) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the agency. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:
- (a) the agency's file number or other reference number;
 - (b) the name of the proceeding;
 - (c) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law; and
 - (d) a statement of the relief that the petitioner seeks from the agency.
- (2) The presiding officer shall grant a petition for intervention if the presiding officer determines that:
- (a) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and
 - (b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.
- (3)
- (a) Any order granting or denying a petition to intervene shall be in writing and mailed to the petitioner and each party.
 - (b) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.
 - (c) The presiding officer may impose the conditions at any time after the intervention.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-208 Procedures for formal adjudicative proceedings -- Orders.

In formal adjudicative proceedings:

- (1) Within a reasonable time after the hearing, or after the filing of any posthearing documents permitted by the presiding officer, or within the time required by any applicable statute or rule of the agency, the presiding officer shall sign and issue an order that includes:
- (a) a statement of the presiding officer's findings of fact based exclusively on the evidence of record in the adjudicative proceedings or on facts officially noted;
 - (b) a statement of the presiding officer's conclusions of law;
 - (c) a statement of the reasons for the presiding officer's decision;
 - (d) a statement of any relief ordered by the agency;

- (e) a notice of the right to apply for reconsideration;
 - (f) a notice of any right to administrative or judicial review of the order available to aggrieved parties; and
 - (g) the time limits applicable to any reconsideration or review.
- (2) The presiding officer may use the presiding officer's experience, technical competence, and specialized knowledge to evaluate the evidence.
 - (3) A finding of fact that was contested may not be based solely on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence.
 - (4) This section does not preclude the presiding officer from issuing interim orders to:
 - (a) notify the parties of further hearings;
 - (b) notify the parties of provisional rulings on a portion of the issues presented; or
 - (c) otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-209 Default.

- (1) The presiding officer may enter an order of default against a party if:
 - (a) a party in an informal adjudicative proceeding fails to participate in the adjudicative proceeding;
 - (b) a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after receiving proper notice; or
 - (c) a respondent in a formal adjudicative proceeding fails to file a response under Section 63G-4-204.
- (2) An order of default shall include a statement of the grounds for default and shall be mailed to all parties.
- (3)
 - (a) A defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure.
 - (b) A motion to set aside a default and any subsequent order shall be made to the presiding officer.
 - (c) A defaulted party may seek agency review under Section 63G-4-301, or reconsideration under Section 63G-4-302, only on the decision of the presiding officer on the motion to set aside the default.
- (4)
 - (a) In an adjudicative proceeding begun by the agency, or in an adjudicative proceeding begun by a party that has other parties besides the party in default, the presiding officer shall, after issuing the order of default, conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.
 - (b) In an adjudicative proceeding that has no parties other than the agency and the party in default, the presiding officer shall, after issuing the order of default, dismiss the proceeding.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 3

Agency Review

63G-4-301 Agency review -- Procedure.

- (1)
 - (a) If a statute or the agency's rules permit parties to any adjudicative proceeding to seek review of an order by the agency or by a superior agency, the aggrieved party may file a written request for review within 30 days after the issuance of the order with the person or entity designated for that purpose by the statute or rule.
 - (b) The request shall:
 - (i) be signed by the party seeking review;
 - (ii) state the grounds for review and the relief requested;
 - (iii) state the date upon which it was mailed; and
 - (iv) be mailed to the presiding officer and to each party.
- (2)
 - (a) Within 15 days of the mailing date of the request for review, or within the time period provided by agency rule, whichever is longer, any party may file a response with the person designated by statute or rule to receive the response.
 - (b) The party who files a response under Subsection (2)(a) shall mail a copy of the response to each of the parties and to the presiding officer.
- (3) If a statute or the agency's rules require review of an order by the agency or a superior agency, the agency or superior agency shall review the order within a reasonable time or within the time required by statute or the agency's rules.
- (4) To assist in review, the agency or superior agency may by order or rule permit the parties to file briefs or other documents, or to conduct oral argument.
- (5) Notice of hearings on review shall be mailed to all parties.
- (6)
 - (a) Within a reasonable time after the filing of any response, other filings, or oral argument, or within the time required by statute or applicable rules, the agency or superior agency shall issue a written order on review.
 - (b) The order on review shall be signed by the agency head or by a person designated by the agency for that purpose and shall be mailed to each party.
 - (c) The order on review shall contain:
 - (i) a designation of the statute or rule permitting or requiring review;
 - (ii) a statement of the issues reviewed;
 - (iii) findings of fact as to each of the issues reviewed;
 - (iv) conclusions of law as to each of the issues reviewed;
 - (v) the reasons for the disposition;
 - (vi) whether the decision of the presiding officer or agency is to be affirmed, reversed, or modified, and whether all or any portion of the adjudicative proceeding is to be remanded;
 - (vii) a notice of any right of further administrative reconsideration or judicial review available to aggrieved parties; and
 - (viii) the time limits applicable to any appeal or review.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-302 Agency review -- Reconsideration.

- (1)

- (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63G-4-301 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.
- (b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.
- (2) The request for reconsideration shall be filed with the agency and one copy shall be mailed to each party by the person making the request.
- (3)
 - (a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.
 - (b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 4 Judicial Review

63G-4-401 Judicial review -- Exhaustion of administrative remedies -- Petition for judicial review.

- (1) A party aggrieved may obtain judicial review of final agency action, except in actions where judicial review is expressly prohibited by statute.
- (2) A party may seek judicial review only after exhausting all administrative remedies available, except that:
 - (a) a party seeking judicial review need not exhaust administrative remedies if this chapter or any other statute states that exhaustion is not required;
 - (b) the court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if:
 - (i) the administrative remedies are inadequate; or
 - (ii) exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.
- (3)
 - (a) Except as provided in Subsection (3)(c), a party shall file a petition for judicial review of final agency action within 30 days after the day on which the order:
 - (i) constituting the final agency action is issued; or
 - (ii) is considered to have been issued under Subsection 63G-4-302(3)(b).
 - (b) The petition shall:
 - (i) name the agency and all other appropriate parties as respondents; and
 - (ii) meet the form requirements specified in this chapter.
 - (c) If a party files a petition for judicial review of a final agency action resulting from a formal adjudicative proceeding within the 30-day time period described in Subsection (3)(a), any other party to the action may file a petition for judicial review if the petition is filed within the time period permitted for a cross petition under Rule 14 of the Utah Rules of Appellate Procedure.

Amended by Chapter 433, 2023 General Session

63G-4-402 Judicial review -- Informal adjudicative proceedings.

- (1)
 - (a) The district courts have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings, except that the juvenile courts have jurisdiction over all final agency actions relating to:
 - (i) the removal or placement of children in state custody;
 - (ii) the support of children under Subsection (1)(a)(i) as determined administratively under Section 78A-6-356; and
 - (iii) supported findings of abuse or neglect made by the Division of Child and Family Services.
 - (b) Venue for judicial review of informal adjudicative proceedings shall be as provided in the statute governing the agency or, in the absence of such a venue provision, in the county where the petitioner resides or maintains the petitioner's principal place of business.
- (2)
 - (a) The petition for judicial review of informal adjudicative proceedings shall be a complaint governed by the Utah Rules of Civil Procedure and shall include:
 - (i) the name and mailing address of the party seeking judicial review;
 - (ii) the name and mailing address of the respondent agency;
 - (iii) the title and date of the final agency action to be reviewed, together with a copy, summary, or brief description of the agency action;
 - (iv) identification of the persons who were parties in the informal adjudicative proceedings that led to the agency action;
 - (v) a copy of the written agency order from the informal proceeding;
 - (vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review;
 - (vii) a request for relief, specifying the type and extent of relief requested; and
 - (viii) a statement of the reasons why the petitioner is entitled to relief.
 - (b) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.
- (3)
 - (a) The court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings.
 - (b) The Utah Rules of Evidence apply in judicial proceedings under this section.

Amended by Chapter 262, 2021 General Session

Superseded 7/1/2024

63G-4-403 Judicial review -- Formal adjudicative proceedings.

- (1) As provided by statute, the Supreme Court or the Court of Appeals has jurisdiction to review all final agency action resulting from formal adjudicative proceedings.
- (2)
 - (a) To seek judicial review of final agency action resulting from formal adjudicative proceedings, the petitioner shall file a petition for review of agency action with the appropriate appellate court in the form required by the appellate rules of the appropriate appellate court.
 - (b) The appellate rules of the appropriate appellate court shall govern all additional filings and proceedings in the appellate court.

- (3) The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Utah Rules of Appellate Procedure, except that:
 - (a) all parties to the review proceedings may stipulate to shorten, summarize, or organize the record;
 - (b) the appellate court may tax the cost of preparing transcripts and copies for the record:
 - (i) against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or
 - (ii) according to any other provision of law.
- (4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:
 - (a) the agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied;
 - (b) the agency has acted beyond the jurisdiction conferred by any statute;
 - (c) the agency has not decided all of the issues requiring resolution;
 - (d) the agency has erroneously interpreted or applied the law;
 - (e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure;
 - (f) the persons taking the agency action were illegally constituted as a decision-making body or were subject to disqualification;
 - (g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court;
 - (h) the agency action is:
 - (i) an abuse of the discretion delegated to the agency by statute;
 - (ii) contrary to a rule of the agency;
 - (iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency; or
 - (iv) otherwise arbitrary or capricious.

Renumbered and Amended by Chapter 382, 2008 General Session

Effective 7/1/2024

63G-4-403 Judicial review -- Formal adjudicative proceedings.

- (1) As provided by statute, the Supreme Court or the Court of Appeals has jurisdiction to review all final agency action resulting from formal adjudicative proceedings as described in Sections 78A-3-102 and 78A-4-103.
- (2)
 - (a) To seek judicial review of final agency action resulting from formal adjudicative proceedings, the petitioner shall file a petition for review of agency action with the appropriate appellate court in the form required by the appellate rules of the appropriate appellate court.
 - (b) The appellate rules of the appropriate appellate court shall govern all additional filings and proceedings in the appellate court.
- (3) The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Utah Rules of Appellate Procedure, except that:
 - (a) all parties to the review proceedings may stipulate to shorten, summarize, or organize the record; and
 - (b) the appellate court may tax the cost of preparing transcripts and copies for the record:

- (i) against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or
 - (ii) according to any other provision of law.
- (4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:
- (a) the agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied;
 - (b) the agency has acted beyond the jurisdiction conferred by any statute;
 - (c) the agency has not decided all of the issues requiring resolution;
 - (d) the agency has erroneously interpreted or applied the law;
 - (e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure;
 - (f) the persons taking the agency action were illegally constituted as a decision-making body or were subject to disqualification;
 - (g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court; or
 - (h) the agency action is:
 - (i) an abuse of the discretion delegated to the agency by statute;
 - (ii) contrary to a rule of the agency;
 - (iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency; or
 - (iv) otherwise arbitrary or capricious.

Amended by Chapter 158, 2024 General Session

63G-4-404 Judicial review -- Type of relief.

- (1)
- (a) In either the review of informal adjudicative proceedings by the district court or the review of formal adjudicative proceedings by an appellate court, the court may award damages or compensation only to the extent expressly authorized by statute.
 - (b) In granting relief, the court may:
 - (i) order agency action required by law;
 - (ii) order the agency to exercise its discretion as required by law;
 - (iii) set aside or modify agency action;
 - (iv) enjoin or stay the effective date of agency action; or
 - (v) remand the matter to the agency for further proceedings.
- (2) Decisions on petitions for judicial review of final agency action are reviewable by a higher court, if authorized by statute.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-405 Judicial review -- Stay and other temporary remedies pending final disposition.

- (1) Unless precluded by another statute, the agency may grant a stay of its order or other temporary remedy during the pendency of judicial review, according to the agency's rules.
- (2) Parties shall petition the agency for a stay or other temporary remedies unless extraordinary circumstances require immediate judicial intervention.

- (3) If the agency denies a stay or denies other temporary remedies requested by a party, the agency's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted.
- (4) If the agency has denied a stay or other temporary remedy to protect the public health, safety, or welfare against a substantial threat, the court may not grant a stay or other temporary remedy unless it finds that:
 - (a) the agency violated its own rules in denying the stay; or
 - (b)
 - (i) the party seeking judicial review is likely to prevail on the merits when the court finally disposes of the matter;
 - (ii) the party seeking judicial review will suffer irreparable injury without immediate relief;
 - (iii) granting relief to the party seeking review will not substantially harm other parties to the proceedings; and
 - (iv) the threat to the public health, safety, or welfare relied upon by the agency is not sufficiently serious to justify the agency's action under the circumstances.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 5 Orders and Enforcement

63G-4-501 Civil enforcement.

- (1)
 - (a) In addition to other remedies provided by law, an agency may seek enforcement of an order by seeking civil enforcement in the district courts.
 - (b) The action seeking civil enforcement of an agency's order must name, as defendants, each alleged violator against whom the agency seeks to obtain civil enforcement.
 - (c) Venue for an action seeking civil enforcement of an agency's order shall be determined by the requirements of the Utah Rules of Civil Procedure.
 - (d) The action may request, and the court may grant, any of the following:
 - (i) declaratory relief;
 - (ii) temporary or permanent injunctive relief;
 - (iii) any other civil remedy provided by law; or
 - (iv) any combination of the foregoing.
- (2)
 - (a) Any person whose interests are directly impaired or threatened by the failure of an agency to enforce an agency's order may timely file a complaint seeking civil enforcement of that order, but the action may not be commenced:
 - (i) until at least 30 days after the plaintiff has given notice of the plaintiff's intent to seek civil enforcement of the alleged violation to the agency head, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;
 - (ii) if the agency has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or a similarly situated defendant; or
 - (iii) if a petition for judicial review of the same order has been filed and is pending in court.
 - (b) The complaint seeking civil enforcement of an agency's order must name, as defendants, the agency whose order is sought to be enforced, the agency that is vested with the

power to enforce the order, and each alleged violator against whom the plaintiff seeks civil enforcement.

- (c) Except to the extent expressly authorized by statute, a complaint seeking civil enforcement of an agency's order may not request, and the court may not grant, any monetary payment apart from taxable costs.
- (3) In a proceeding for civil enforcement of an agency's order, in addition to any other defenses allowed by law, a defendant may defend on the ground that:
 - (a) the order sought to be enforced was issued by an agency without jurisdiction to issue the order;
 - (b) the order does not apply to the defendant;
 - (c) the defendant has not violated the order; or
 - (d) the defendant violated the order but has subsequently complied.
- (4) Decisions on complaints seeking civil enforcement of an agency's order are reviewable in the same manner as other civil cases.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-502 Emergency adjudicative proceedings.

- (1) An agency may issue an order on an emergency basis without complying with the requirements of this chapter if:
 - (a) the facts known by the agency or presented to the agency show that an immediate and significant danger to the public health, safety, or welfare exists; and
 - (b) the threat requires immediate action by the agency.
- (2) In issuing its emergency order, the agency shall:
 - (a) limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;
 - (b) issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the agency's utilization of emergency adjudicative proceedings; and
 - (c) give immediate notice to the persons who are required to comply with the order.
- (3) If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the agency shall commence a formal adjudicative proceeding in accordance with the other provisions of this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-503 Declaratory orders.

- (1) Any person may file a request for agency action, requesting that the agency issue a declaratory order determining the applicability of a statute, rule, or order within the primary jurisdiction of the agency to specified circumstances.
- (2) Each agency shall issue rules that:
 - (a) provide for the form, contents, and filing of petitions for declaratory orders;
 - (b) provide for the disposition of the petitions;
 - (c) define the classes of circumstances in which the agency will not issue a declaratory order;
 - (d) are consistent with the public interest and with the general policy of this chapter; and
 - (e) facilitate and encourage agency issuance of reliable advice.
- (3)
 - (a) An agency may not issue a declaratory order if:

- (i) the request is one of a class of circumstances that the agency has by rule defined as being exempt from declaratory orders; or
- (ii) the person requesting the declaratory order participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request.
- (b) An agency may issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party, only if that person consents in writing to the determination of the matter by a declaratory proceeding.
- (4) Persons may intervene in declaratory proceedings if:
 - (a) they meet the requirements of Section 63G-4-207; and
 - (b) they file timely petitions for intervention according to agency rules.
- (5) An agency may provide, by rule or order, that other provisions of Sections 63G-4-202 through 63G-4-302 apply to declaratory proceedings.
- (6)
 - (a) After receipt of a petition for a declaratory order, the agency may issue a written order:
 - (i) declaring the applicability of the statute, rule, or order in question to the specified circumstances;
 - (ii) setting the matter for adjudicative proceedings;
 - (iii) agreeing to issue a declaratory order within a specified time; or
 - (iv) declining to issue a declaratory order and stating the reasons for its action.
 - (b) A declaratory order shall contain:
 - (i) the names of all parties to the proceeding on which it is based;
 - (ii) the particular facts on which it is based; and
 - (iii) the reasons for its conclusion.
 - (c) A copy of all orders issued in response to a request for a declaratory proceeding shall be mailed promptly to the petitioner and any other parties.
 - (d) A declaratory order has the same status and binding effect as any other order issued in an adjudicative proceeding.
- (7) Unless the petitioner and the agency agree in writing to an extension, if an agency has not issued a declaratory order within 60 days after receipt of the petition for a declaratory order, the petition is denied.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 6 Electronic Records

63G-4-601 Electronic records and conversion of written records by governmental agencies.

A governmental agency may make rules regarding electronic records and conversion of written records as prescribed by Title 46, Chapter 4, Part 5, Electronic Records in Government Agencies.

Renumbered and Amended by Chapter 382, 2008 General Session

Chapter 5 Governmental Dispute Resolution Act

Part 1 General Provisions

63G-5-101 Title.

This chapter is known as the "Governmental Dispute Resolution Act."

Renumbered and Amended by Chapter 382, 2008 General Session

63G-5-102 Definitions.

As used in this chapter:

- (1) "Agency" is defined in Section 63G-4-103.
- (2) "Alternative dispute resolution" or "ADR" means a process other than litigation used to resolve disputes including mediation, arbitration, facilitation, regulatory negotiation, fact-finding, conciliation, early neutral evaluation, and policy dialogues.
- (3) "ADR organization" is defined in Section 78B-6-202.
- (4)
 - (a) "ADR provider" means a neutral person who:
 - (i) meets the qualifications established by Judicial Council rules authorized under Section 78B-6-205; and
 - (ii) conducts an ADR procedure.
 - (b) "ADR provider" includes an arbitrator, mediator, and early neutral evaluator and may be an employee or an independent contractor.
- (5) "Arbitration" means a private hearing before an ADR provider or panel of ADR providers who hear the evidence, consider the contentions of the parties, and enter a written award to resolve the issues presented.
- (6) "Mediation" is defined in Section 78B-6-202.
- (7) "Neutral" means a person who holds himself out to the public as a qualified person trained to use alternative dispute resolution techniques to resolve conflicts.

Amended by Chapter 3, 2008 General Session

Renumbered and Amended by Chapter 382, 2008 General Session

Part 2 Alternative Dispute Resolution

63G-5-201 Alternative dispute resolution -- Authorization -- Procedures -- Agency coordinators -- Contracts.

- (1) An agency may use an ADR procedure to resolve any dispute, issue, or controversy involving any of the agency's operations, programs, or functions, including formal and informal adjudications, rulemakings, enforcement actions, permitting, certifications, licensing, policy development, and contract administration only with the consent of all the interested parties.
- (2)
 - (a) An agency may develop and adopt an ADR procedure governed by rules, adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

- (b) In developing and adopting an ADR procedure under Subsection (2)(a), an agency shall consider:
 - (i) public interest in maintaining open access to and neutrality of an ADR provider or neutral;
 - (ii) providing a broad selection of ADR providers or neutrals; and
 - (iii) creating objective criteria for an ADR provider or neutral to become qualified to conduct an agency ADR procedure.
- (3) ADR procedures developed and used by an agency must be consistent with the requirements of Title 63G, Chapter 4, Administrative Procedures Act.
- (4) ADR procedures are voluntary and may be used:
 - (a) at the discretion of the agency; or
 - (b) with an agency that has adopted an ADR procedure under Subsection (2), at the request of an interested party to a dispute.
- (5) An agency that chooses to use an ADR procedure shall develop an agreement with interested parties that provides:
 - (a)
 - (i) for the appointment of an ADR provider or a neutral;
 - (ii) whose appointment is agreed upon by all parties to the dispute;
 - (b) specifies any limitation periods applicable to the commencement or conclusion of formal administrative or judicial proceedings and, if applicable, specifies any time periods that the parties have agreed to waive; and
 - (c) sets forth how costs and expenses shall be apportioned among the parties.
- (6)
 - (a) An ADR provider or neutral agreed upon in Subsection (5) shall have no official, financial, or personal conflict of interest with any issue or party in controversy unless the conflict of interest is fully disclosed in writing to all of the parties and all of the parties agree that the person may continue to serve.
 - (b) An agency may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to develop standards to assure the neutrality of an ADR provider or neutral.
- (7) An agreement developed in accordance with Subsection (5) may be included in an enforcement order, stipulation, contract, permit, or other document entered into or issued by the agency.
- (8)
 - (a) The administrative head of an agency may designate an employee as the ADR coordinator for that agency.
 - (b) The agency ADR coordinator shall:
 - (i) make recommendations to the agency's executive staff on issues and disputes that are suitable for alternative dispute resolution;
 - (ii) analyze the agency's enabling statutes and rules to determine whether they contain impediments to the use of ADR procedures and suggest any modifications;
 - (iii) monitor the agency's use of ADR procedures;
 - (iv) arrange for training of agency staff in ADR procedures; and
 - (v) provide information about the agency's ADR procedures to the agency's staff and to the public.
- (9) In order to implement the purposes of this chapter, an agency may employ or contract with a neutral, an ADR provider, an ADR organization, another agency, or a private entity for any service necessary on a case-by-case basis, on a service basis, or on a program basis.
- (10) ADR procedures developed and used under this chapter are subject to the confidentiality requirements of Section 78B-6-208.

Amended by Chapter 3, 2008 General Session
Renumbered and Amended by Chapter 382, 2008 General Session

Part 3 Application

63G-5-301 Effect on other laws.

Nothing in this chapter or in the agreements and procedures developed in Section 63G-5-201 shall:

- (1) limit other dispute resolution procedures available to an agency; and
- (2) deny a person a right granted under federal or other state law, including a right to an administrative or judicial hearing.

Renumbered and Amended by Chapter 382, 2008 General Session

Chapter 6a Utah Procurement Code

Part 1 General Procurement Provisions

63G-6a-101 Title.

- (1) This chapter is known as the "Utah Procurement Code."
- (2) This part is known as "General Procurement Provisions."

Renumbered and Amended by Chapter 347, 2012 General Session

63G-6a-102 Purpose of chapter.

The underlying purposes and policies of this chapter are:

- (1) to ensure transparency in the public procurement process;
- (2) to ensure the fair and equitable treatment of all persons who participate in the public procurement process;
- (3) to provide increased economy in state procurement activities; and
- (4) to foster effective broad-based competition within the free enterprise system.

Amended by Chapter 348, 2017 General Session

63G-6a-103 Definitions.

As used in this chapter:

- (1) "Approved vendor" means a person who has been approved for inclusion on an approved vendor list through the approved vendor list process.
- (2) "Approved vendor list" means a list of approved vendors established under Section 63G-6a-507.

- (3) "Approved vendor list process" means the procurement process described in Section 63G-6a-507.
- (4) "Bidder" means a person who submits a bid or price quote in response to an invitation for bids.
- (5) "Bidding process" means the procurement process described in Part 6, Bidding.
- (6) "Board" means the Utah State Procurement Policy Board, created in Section 63G-6a-202.
- (7) "Change directive" means a written order signed by the procurement officer that directs the contractor to suspend work or make changes, as authorized by contract, without the consent of the contractor.
- (8) "Change order" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.
- (9) "Chief procurement officer" means the individual appointed under Section 63A-2-102.
- (10) "Conducting procurement unit" means a procurement unit that conducts all aspects of a procurement:
 - (a) except:
 - (i) reviewing a solicitation to verify that it is in proper form; and
 - (ii) causing the publication of a notice of a solicitation; and
 - (b) including:
 - (i) preparing any solicitation document;
 - (ii) appointing an evaluation committee;
 - (iii) conducting the evaluation process, except the process relating to scores calculated for costs of proposals;
 - (iv) selecting and recommending the person to be awarded a contract;
 - (v) negotiating the terms and conditions of a contract, subject to the issuing procurement unit's approval; and
 - (vi) contract administration.
- (11) "Conservation district" means the same as that term is defined in Section 17D-3-102.
- (12) "Construction project":
 - (a) means a project for the construction, renovation, alteration, improvement, or repair of a public facility on real property, including all services, labor, supplies, and materials for the project; and
 - (b) does not include services and supplies for the routine, day-to-day operation, repair, or maintenance of an existing public facility.
- (13) "Construction manager/general contractor":
 - (a) means a contractor who enters into a contract:
 - (i) for the management of a construction project; and
 - (ii) that allows the contractor to subcontract for additional labor and materials that are not included in the contractor's cost proposal submitted at the time of the procurement of the contractor's services; and
 - (b) does not include a contractor whose only subcontract work not included in the contractor's cost proposal submitted as part of the procurement of the contractor's services is to meet subcontracted portions of change orders approved within the scope of the project.
- (14) "Construction subcontractor":
 - (a) means a person under contract with a contractor or another subcontractor to provide services or labor for the design or construction of a construction project;
 - (b) includes a general contractor or specialty contractor licensed or exempt from licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and

- (c) does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor for a construction project.
- (15) "Contract" means an agreement for a procurement.
- (16) "Contract administration" means all functions, duties, and responsibilities associated with managing, overseeing, and carrying out a contract between a procurement unit and a contractor, including:
 - (a) implementing the contract;
 - (b) ensuring compliance with the contract terms and conditions by the conducting procurement unit and the contractor;
 - (c) executing change orders;
 - (d) processing contract amendments;
 - (e) resolving, to the extent practicable, contract disputes;
 - (f) curing contract errors and deficiencies;
 - (g) terminating a contract;
 - (h) measuring or evaluating completed work and contractor performance;
 - (i) computing payments under the contract; and
 - (j) closing out a contract.
- (17) "Contractor" means a person who is awarded a contract with a procurement unit.
- (18) "Cooperative procurement" means procurement conducted by, or on behalf of:
 - (a) more than one procurement unit; or
 - (b) a procurement unit and a cooperative purchasing organization.
- (19) "Cooperative purchasing organization" means an organization, association, or alliance of purchasers established to combine purchasing power in order to obtain the best value for the purchasers by engaging in procurements in accordance with Section 63G-6a-2105.
- (20) "Cost-plus-a-percentage-of-cost contract" means a contract under which the contractor is paid a percentage of the total actual expenses or costs in addition to the contractor's actual expenses or costs.
- (21) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this chapter, and a fee, if any.
- (22) "Days" means calendar days, unless expressly provided otherwise.
- (23) "Definite quantity contract" means a fixed price contract that provides for a specified amount of supplies over a specified period, with deliveries scheduled according to a specified schedule.
- (24) "Design professional" means:
 - (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act;
 - (b) an individual licensed as a professional engineer or professional land surveyor under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;
 - (c) an individual licensed under Title 58, Chapter 53, Landscape Architects Licensing Act, to engage in the practice of landscape architecture, as defined in Section 58-53-102; or
 - (d) an individual certified as a commercial interior designer under Title 58, Chapter 86, State Certification of Commercial Interior Designers Act.
- (25) "Design professional procurement process" means the procurement process described in Part 15, Design Professional Services.
- (26) "Design professional services" means:
 - (a) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;
 - (b) professional engineering as defined in Section 58-22-102;
 - (c) master planning and programming services;

- (d) professional services within the scope of the practice of landscape architecture, as defined in Section 58-53-102; or
- (e) services within the scope of the practice of commercial interior design, as defined in Section 58-86-102.
- (27) "Design-build" means the procurement of design professional services and construction by the use of a single contract.
- (28) "Division" means the Division of Purchasing and General Services, created in Section 63A-2-101.
- (29) "Educational procurement unit" means:
 - (a) a school district;
 - (b) a public school, including a local school board or a charter school;
 - (c) the Utah Schools for the Deaf and the Blind;
 - (d) the Utah Education and Telehealth Network;
 - (e) an institution of higher education of the state described in Section 53B-1-102; or
 - (f) the State Board of Education.
- (30) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:
 - (a) is regularly maintained by a manufacturer or contractor;
 - (b) is published or otherwise available for inspection by customers; and
 - (c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.
- (31)
 - (a) "Executive branch procurement unit" means a department, division, office, bureau, agency, or other organization within the state executive branch.
 - (b) "Executive branch procurement unit" does not include the Colorado River Authority of Utah as provided in Section 63M-14-210.
- (32) "Facilities division" means the Division of Facilities Construction and Management, created in Section 63A-5b-301.
- (33) "Fixed price contract" means a contract that provides a price, for each procurement item obtained under the contract, that is not subject to adjustment except to the extent that:
 - (a) the contract provides, under circumstances specified in the contract, for an adjustment in price that is not based on cost to the contractor; or
 - (b) an adjustment is required by law.
- (34) "Fixed price contract with price adjustment" means a fixed price contract that provides for an upward or downward revision of price, precisely described in the contract, that:
 - (a) is based on the consumer price index or another commercially acceptable index, source, or formula; and
 - (b) is not based on a percentage of the cost to the contractor.
- (35) "Grant" means an expenditure of public funds or other assistance, or an agreement to expend public funds or other assistance, for a public purpose authorized by law, without acquiring a procurement item in exchange.
- (36) "Human services procurement item" means a procurement item used to provide services or support to a child, youth, adult, or family.
- (37) "Immaterial error":
 - (a) means an irregularity or abnormality that is:
 - (i) a matter of form that does not affect substance; or

- (ii) an inconsequential variation from a requirement of a solicitation that has no, little, or a trivial effect on the procurement process and that is not prejudicial to other vendors; and
- (b) includes:
 - (i) a missing signature, missing acknowledgment of an addendum, or missing copy of a professional license, bond, or insurance certificate;
 - (ii) a typographical error;
 - (iii) an error resulting from an inaccuracy or omission in the solicitation; and
 - (iv) any other error that the procurement official reasonably considers to be immaterial.
- (38) "Indefinite quantity contract" means a fixed price contract that:
 - (a) is for an indefinite amount of procurement items to be supplied as ordered by a procurement unit; and
 - (b)
 - (i) does not require a minimum purchase amount; or
 - (ii) provides a maximum purchase limit.
- (39) "Independent procurement unit" means:
 - (a)
 - (i) a legislative procurement unit;
 - (ii) a judicial branch procurement unit;
 - (iii) an educational procurement unit;
 - (iv) a local government procurement unit;
 - (v) a conservation district;
 - (vi) a local building authority;
 - (vii) a special district;
 - (viii) a public corporation;
 - (ix) a special service district; or
 - (x) the Utah Communications Authority, established in Section 63H-7a-201;
 - (b) the facilities division, but only to the extent of the procurement authority provided under Title 63A, Chapter 5b, Administration of State Facilities;
 - (c) the attorney general, but only to the extent of the procurement authority provided under Title 67, Chapter 5, Attorney General;
 - (d) the Department of Transportation, but only to the extent of the procurement authority provided under Title 72, Transportation Code;
 - (e) the Department of Health and Human Services, but only for the procurement of a human services procurement item; or
 - (f) any other executive branch department, division, office, or entity that has statutory procurement authority outside this chapter, but only to the extent of that statutory procurement authority.
- (40)
 - (a) "Interlocal entity" means a separate political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.
 - (b) "Interlocal entity" does not include a project entity.
- (41) "Invitation for bids":
 - (a) means a document used to solicit:
 - (i) bids to provide a procurement item to a procurement unit; or
 - (ii) quotes for a price of a procurement item to be provided to a procurement unit; and
 - (b) includes all documents attached to or incorporated by reference in a document described in Subsection (41)(a).
- (42) "Issuing procurement unit" means a procurement unit that:

- (a) reviews a solicitation to verify that it is in proper form;
 - (b) causes the notice of a solicitation to be published; and
 - (c) negotiates and approves the terms and conditions of a contract.
- (43) "Judicial procurement unit" means:
- (a) the Utah Supreme Court;
 - (b) the Utah Court of Appeals;
 - (c) the Judicial Council;
 - (d) a state judicial district; or
 - (e) an office, committee, subcommittee, or other organization within the state judicial branch.
- (44) "Labor hour contract" is a contract under which:
- (a) the supplies and materials are not provided by, or through, the contractor; and
 - (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and profit for a specified number of labor hours or days.
- (45) "Legislative procurement unit" means:
- (a) the Legislature;
 - (b) the Senate;
 - (c) the House of Representatives;
 - (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
 - (e) a committee, subcommittee, commission, or other organization:
 - (i) within the state legislative branch; or
 - (ii)
 - (A) that is created by statute to advise or make recommendations to the Legislature;
 - (B) the membership of which includes legislators; and
 - (C) for which the Office of Legislative Research and General Counsel provides staff support.
- (46) "Local building authority" means the same as that term is defined in Section 17D-2-102.
- (47) "Local government procurement unit" means:
- (a) a county, municipality, interlocal entity, or project entity, and each office of the county, municipality, interlocal entity, or project entity, unless:
 - (i) the county or municipality adopts a procurement code by ordinance;
 - (ii) the interlocal entity adopts procurement rules or policies as provided in Subsection 11-13-226(2); or
 - (iii) the project entity adopts a procurement code through the process described in Section 11-13-316;
 - (b)
 - (i) a county or municipality that has adopted this entire chapter by ordinance, and each office or agency of that county or municipality; and
 - (ii) a project entity that has adopted this entire chapter through the process described in Subsection 11-13-316; or
 - (c) a county, municipality, or project entity, and each office of the county, municipality, or project entity that has adopted a portion of this chapter to the extent that:
 - (i) a term in the ordinance is used in the adopted chapter; or
 - (ii) a term in the ordinance is used in the language a project entity adopts in its procurement code through the process described in Section 11-13-316.
- (48) "Multiple award contracts" means the award of a contract for an indefinite quantity of a procurement item to more than one person.
- (49) "Multiyear contract" means a contract that extends beyond a one-year period, including a contract that permits renewal of the contract, without competition, beyond the first year of the contract.

- (50) "Municipality" means a city or town.
- (51) "Nonadopting local government procurement unit" means:
 - (a) a county or municipality that has not adopted Part 16, Protests, Part 17, Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19, General Provisions Related to Protest or Appeal; and
 - (b) each office or agency of a county or municipality described in Subsection (51)(a).
- (52) "Offeror" means a person who submits a proposal in response to a request for proposals.
- (53) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.
- (54) "Procure" means to acquire a procurement item through a procurement.
- (55) "Procurement" means the acquisition of a procurement item through an expenditure of public funds, or an agreement to expend public funds, including an acquisition through a public-private partnership.
- (56) "Procurement item" means an item of personal property, a technology, a service, or a construction project.
- (57) "Procurement official" means:
 - (a) for a procurement unit other than an independent procurement unit, the chief procurement officer;
 - (b) for a legislative procurement unit, the individual, individuals, or body designated in a policy adopted by the Legislative Management Committee;
 - (c) for a judicial procurement unit, the Judicial Council or an individual or body designated by the Judicial Council by rule;
 - (d) for a local government procurement unit:
 - (i) the legislative body of the local government procurement unit; or
 - (ii) an individual or body designated by the local government procurement unit;
 - (e) for a special district, the board of trustees of the special district or the board of trustees' designee;
 - (f) for a special service district, the governing body of the special service district or the governing body's designee;
 - (g) for a local building authority, the board of directors of the local building authority or the board of directors' designee;
 - (h) for a conservation district, the board of supervisors of the conservation district or the board of supervisors' designee;
 - (i) for a public corporation, the board of directors of the public corporation or the board of directors' designee;
 - (j) for a school district or any school or entity within a school district, the board of the school district or the board's designee;
 - (k) for a charter school, the individual or body with executive authority over the charter school or the designee of the individual or body;
 - (l) for an institution of higher education described in Section 53B-2-101, the president of the institution of higher education or the president's designee;
 - (m) for the State Board of Education, the State Board of Education or the State Board of Education's designee;
 - (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or the designee of the Commissioner of Higher Education;
 - (o) for the Utah Communications Authority, established in Section 63H-7a-201, the executive director of the Utah Communications Authority or the executive director's designee; or
 - (p)

- (i) for the facilities division, and only to the extent of procurement activities of the facilities division as an independent procurement unit under the procurement authority provided under Title 63A, Chapter 5b, Administration of State Facilities, the director of the facilities division or the director's designee;
 - (ii) for the attorney general, and only to the extent of procurement activities of the attorney general as an independent procurement unit under the procurement authority provided under Title 67, Chapter 5, Attorney General, the attorney general or the attorney general's designee;
 - (iii) for the Department of Transportation created in Section 72-1-201, and only to the extent of procurement activities of the Department of Transportation as an independent procurement unit under the procurement authority provided under Title 72, Transportation Code, the executive director of the Department of Transportation or the executive director's designee;
 - (iv) for the Department of Health and Human Services, and only to the extent of the procurement activities of the Department of Health and Human Services as an independent procurement unit, the executive director of the Department of Health and Human Services or the executive director's designee; or
 - (v) for any other executive branch department, division, office, or entity that has statutory procurement authority outside this chapter, and only to the extent of the procurement activities of the department, division, office, or entity as an independent procurement unit under the procurement authority provided outside this chapter for the department, division, office, or entity, the chief executive officer of the department, division, office, or entity or the chief executive officer's designee.
- (58) "Procurement unit" means:
- (a) a legislative procurement unit;
 - (b) an executive branch procurement unit;
 - (c) a judicial procurement unit;
 - (d) an educational procurement unit;
 - (e) the Utah Communications Authority, established in Section 63H-7a-201;
 - (f) a local government procurement unit;
 - (g) a special district;
 - (h) a special service district;
 - (i) a local building authority;
 - (j) a conservation district; or
 - (k) a public corporation.
- (59) "Professional service" means labor, effort, or work that requires specialized knowledge, expertise, and discretion, including labor, effort, or work in the field of:
- (a) accounting;
 - (b) administrative law judge service;
 - (c) architecture;
 - (d) construction design and management;
 - (e) engineering;
 - (f) financial services;
 - (g) information technology;
 - (h) the law;
 - (i) medicine;
 - (j) psychiatry; or
 - (k) underwriting.
- (60) "Project entity" means the same as that term is defined in Section 11-13-103.

- (61) "Protest officer" means:
 - (a) for the division or an independent procurement unit:
 - (i) the procurement official;
 - (ii) the procurement official's designee who is an employee of the procurement unit; or
 - (iii) a person designated by rule made by the rulemaking authority; or
 - (b) for a procurement unit other than an independent procurement unit, the chief procurement officer or the chief procurement officer's designee who is an employee of the division .
- (62) "Public corporation" means the same as that term is defined in Section 63E-1-102.
- (63) "Public entity" means the state or any other government entity within the state that expends public funds.
- (64) "Public facility" means a building, structure, infrastructure, improvement, or other facility of a public entity.
- (65) "Public funds" means money, regardless of its source, including from the federal government, that is owned or held by a procurement unit.
- (66) "Public transit district" means a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.
- (67) "Public-private partnership" means an arrangement or agreement, occurring on or after January 1, 2017, between a procurement unit and one or more contractors to provide for a public need through the development or operation of a project in which the contractor or contractors share with the procurement unit the responsibility or risk of developing, owning, maintaining, financing, or operating the project.
- (68) "Qualified vendor" means a vendor who:
 - (a) is responsible; and
 - (b) submits a responsive statement of qualifications under Section 63G-6a-410 that meets the minimum mandatory requirements, evaluation criteria, and any applicable score thresholds set forth in the request for statement of qualifications.
- (69) "Real property" means land and any building, fixture, improvement, appurtenance, structure, or other development that is permanently affixed to land.
- (70) "Request for information" means a nonbinding process through which a procurement unit requests information relating to a procurement item.
- (71) "Request for proposals" means a document used to solicit proposals to provide a procurement item to a procurement unit, including all other documents that are attached to that document or incorporated in that document by reference.
- (72) "Request for proposals process" means the procurement process described in Part 7, Request for Proposals.
- (73) "Request for statement of qualifications" means a document used to solicit information about the qualifications of a person interested in responding to a potential procurement, including all other documents attached to that document or incorporated in that document by reference.
- (74) "Requirements contract" means a contract:
 - (a) under which a contractor agrees to provide a procurement unit's entire requirements for certain procurement items at prices specified in the contract during the contract period; and
 - (b) that:
 - (i) does not require a minimum purchase amount; or
 - (ii) provides a maximum purchase limit.
- (75) "Responsible" means being capable, in all respects, of:
 - (a) meeting all the requirements of a solicitation; and
 - (b) fully performing all the requirements of the contract resulting from the solicitation, including being financially solvent with sufficient financial resources to perform the contract.

- (76) "Responsive" means conforming in all material respects to the requirements of a solicitation.
- (77) "Rule" includes a policy or regulation adopted by the rulemaking authority, if adopting a policy or regulation is the method the rulemaking authority uses to adopt provisions that govern the applicable procurement unit.
- (78) "Rulemaking authority" means:
- (a) for a legislative procurement unit, the Legislative Management Committee;
 - (b) for a judicial procurement unit, the Judicial Council;
 - (c)
 - (i) only to the extent of the procurement authority expressly granted to the procurement unit by statute:
 - (A) for the facilities division, the facilities division;
 - (B) for the Office of the Attorney General, the attorney general;
 - (C) for the Department of Transportation created in Section 72-1-201, the executive director of the Department of Transportation;
 - (D) for the Department of Health and Human Services, the executive director of the Department of Health and Human Services; and
 - (E) for any other executive branch department, division, office, or entity that has statutory procurement authority outside this chapter, the governing authority of the department, division, office, or entity; and
 - (ii) for each other executive branch procurement unit, the board;
 - (d) for a local government procurement unit:
 - (i) the governing body of the local government unit; or
 - (ii) an individual or body designated by the local government procurement unit;
 - (e) for a school district or a public school, the board, except to the extent of a school district's own nonadministrative rules that do not conflict with the provisions of this chapter;
 - (f) for a state institution of higher education, the Utah Board of Higher Education;
 - (g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the State Board of Education;
 - (h) for a public transit district, the chief executive of the public transit district;
 - (i) for a special district other than a public transit district or for a special service district, the board, except to the extent that the board of trustees of the special district or the governing body of the special service district makes its own rules:
 - (i) with respect to a subject addressed by board rules; or
 - (ii) that are in addition to board rules;
 - (j) for the Utah Educational Savings Plan, created in Section 53B-8a-103, the Utah Board of Higher Education;
 - (k) for the School and Institutional Trust Lands Administration, created in Section 53C-1-201, the School and Institutional Trust Lands Board of Trustees;
 - (l) for the School and Institutional Trust Fund Office, created in Section 53D-1-201, the School and Institutional Trust Fund Board of Trustees;
 - (m) for the Utah Communications Authority, established in Section 63H-7a-201, the Utah Communications Authority board, created in Section 63H-7a-203; or
 - (n) for any other procurement unit, the board.
- (79) "Service":
- (a) means labor, effort, or work to produce a result that is beneficial to a procurement unit;
 - (b) includes a professional service; and
 - (c) does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.

- (80) "Small purchase process" means the procurement process described in Section 63G-6a-506.
- (81) "Sole source contract" means a contract resulting from a sole source procurement.
- (82) "Sole source procurement" means a procurement without competition pursuant to a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the procurement item.
- (83) "Solicitation" means an invitation for bids, request for proposals, or request for statement of qualifications.
- (84) "Solicitation response" means:
 - (a) a bid submitted in response to an invitation for bids;
 - (b) a proposal submitted in response to a request for proposals; or
 - (c) a statement of qualifications submitted in response to a request for statement of qualifications.
- (85) "Special district" means the same as that term is defined in Section 17B-1-102.
- (86) "Special service district" means the same as that term is defined in Section 17D-1-102.
- (87) "Specification" means any description of the physical or functional characteristics or of the nature of a procurement item included in an invitation for bids or a request for proposals, or otherwise specified or agreed to by a procurement unit, including a description of:
 - (a) a requirement for inspecting or testing a procurement item; or
 - (b) preparing a procurement item for delivery.
- (88) "Standard procurement process" means:
 - (a) the bidding process;
 - (b) the request for proposals process;
 - (c) the approved vendor list process;
 - (d) the small purchase process; or
 - (e) the design professional procurement process.
- (89) "State cooperative contract" means a contract awarded by the division for and in behalf of all public entities.
- (90) "Statement of qualifications" means a written statement submitted to a procurement unit in response to a request for statement of qualifications.
- (91) "Subcontractor":
 - (a) means a person under contract to perform part of a contractual obligation under the control of the contractor, whether the person's contract is with the contractor directly or with another person who is under contract to perform part of a contractual obligation under the control of the contractor; and
 - (b) includes a supplier, distributor, or other vendor that furnishes supplies or services to a contractor.
- (92) "Technology" means the same as "information technology," as defined in Section 63A-16-102.
- (93) "Tie bid" means that the lowest responsive bids of responsible bidders are identical in price.
- (94) "Time and materials contract" means a contract under which the contractor is paid:
 - (a) the actual cost of direct labor at specified hourly rates;
 - (b) the actual cost of materials and equipment usage; and
 - (c) an additional amount, expressly described in the contract, to cover overhead and profit, that is not based on a percentage of the cost to the contractor.
- (95) "Transitional costs":
 - (a) means the costs of changing:
 - (i) from an existing provider of a procurement item to another provider of that procurement item;
 - or
 - (ii) from an existing type of procurement item to another type;
 - (b) includes:

- (i) training costs;
 - (ii) conversion costs;
 - (iii) compatibility costs;
 - (iv) costs associated with system downtime;
 - (v) disruption of service costs;
 - (vi) staff time necessary to implement the change;
 - (vii) installation costs; and
 - (viii) ancillary software, hardware, equipment, or construction costs; and
- (c) does not include:
- (i) the costs of preparing for or engaging in a procurement process; or
 - (ii) contract negotiation or drafting costs.
- (96) "Vendor":
- (a) means a person who is seeking to enter into a contract with a procurement unit to provide a procurement item; and
 - (b) includes:
 - (i) a bidder;
 - (ii) an offeror;
 - (iii) an approved vendor;
 - (iv) a design professional; and
 - (v) a person who submits an unsolicited proposal under Section 63G-6a-712.

Amended by Chapter 291, 2024 General Session

Amended by Chapter 408, 2024 General Session

Amended by Chapter 438, 2024 General Session

63G-6a-106 Independent procurement units.

- (1) An independent procurement unit may, without the supervision, interference, oversight, control, or involvement of the division or the chief procurement officer, but in accordance with the requirements of this chapter:
 - (a) engage in a standard procurement process;
 - (b) acquire a procurement item under an exception, as provided in this chapter, to the requirement to use a standard procurement process; or
 - (c) otherwise engage in an act authorized or required by this chapter.
- (2) Notwithstanding Subsection (1), an independent procurement unit may agree in writing with the division to extend the authority of the division or the chief procurement officer to the procurement unit, as provided in the agreement.
- (3) With respect to a procurement or contract over which an independent procurement unit's procurement official has authority, the procurement official may:
 - (a) manage and supervise the procurement to ensure to the extent practicable that taxpayers receive the best value;
 - (b) prepare and issue standard specifications for procurement items;
 - (c) review contracts, coordinate contract compliance, conduct contract audits, and approve change orders;
 - (d) delegate duties and authority to an employee of the procurement unit, as the independent procurement unit's procurement official considers appropriate;
 - (e) for the procurement official of an executive branch procurement unit that is an independent procurement unit, coordinate with the Division of Technology Services, created in Section

- 63A-16-103, with respect to the procurement unit's procurement of information technology services;
- (f) correct, amend, or cancel a procurement at any stage of the procurement process if the procurement is out of compliance with this chapter or a rule adopted by the rulemaking authority;
 - (g) attempt to resolve a contract dispute in coordination with the legal counsel of the independent procurement unit; and
 - (h) at any time during the term of a contract awarded by the independent procurement unit, correct or amend a contract to bring it into compliance or cancel the contract:
 - (i) if the procurement official determines that correcting, amending, or canceling the contract is in the best interest of the procurement unit; and
 - (ii) after consulting with, as applicable, the attorney general's office or the procurement unit's legal counsel.
- (4) The attorney general may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer:
- (a) retain outside counsel, subject to Section 67-5-33 if the attorney general retains outside counsel under a contingent fee contract, as defined in that section; or
 - (b) procure litigation support services, including retaining an expert witness.
- (5) An independent procurement unit that is not represented by the attorney general's office may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer:
- (a) retain outside counsel; or
 - (b) procure litigation support services, including retaining an expert witness.
- (6) The state auditor's office may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer, procure audit services.
- (7) The state treasurer may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer, procure:
- (a) deposit services; and
 - (b) services related to issuing bonds.

Amended by Chapter 344, 2021 General Session

63G-6a-106.5 Policy for legislative procurement units.

The Legislative Management Committee shall adopt a policy establishing requirements applicable to a legislative procurement unit.

Enacted by Chapter 355, 2016 General Session

63G-6a-107.2 Application of chapter in general.

- (1) Except as provided in Section 63G-6a-107.6, this chapter applies to every procurement.
- (2) Notwithstanding any other provision of this chapter:
 - (a) a procurement unit may administer a procurement in accordance with the requirements imposed by the source of the funds used to procure the procurement item; and
 - (b) if a procurement involves the expenditure of federal or state assistance, federal contract funds, local matching funds, or federal financial participation funds, the procurement unit shall comply with mandatory applicable federal or state law and regulations not reflected in this chapter.
- (3) A procurement unit that is subject to this chapter may not obtain a procurement item unless:

- (a) the procurement unit complies with:
 - (i) all applicable requirements of this chapter; and
 - (ii) the applicable rules that the rulemaking authority makes pursuant to this chapter; and
- (b) if the procurement unit is not the division or an independent procurement unit, the procurement unit obtains the procurement item under the direction and approval of the division, unless otherwise provided by a rule made by the board.

Enacted by Chapter 257, 2020 General Session

63G-6a-107.4 Application of chapter to counties and municipalities and the Utah Housing Corporation.

A county or municipality or the Utah Housing Corporation:

- (1) may adopt:
 - (a) any or all provisions of this chapter; or
 - (b) any or all rules adopted by the board under this chapter; and
- (2) is subject to and shall comply with the provisions of this chapter and the rules that are adopted by the county or municipality or the Utah Housing Corporation, respectively.

Enacted by Chapter 257, 2020 General Session

63G-6a-107.5 Application of chapter to project entities.

This chapter applies to a project entity to the extent described in Section 11-13-316.

Enacted by Chapter 422, 2022 General Session

63G-6a-107.6 Exemptions from chapter.

- (1) Except for this Subsection (1), the provisions of this chapter do not apply to:
 - (a) a public entity's acquisition of a procurement item from another public entity; or
 - (b) a public entity that is not a procurement unit, including the Colorado River Authority of Utah as provided in Section 63M-14-210.
- (2) Unless otherwise provided by statute and except for this Subsection (2), the provisions of this chapter do not apply to the acquisition or disposal of real property or an interest in real property.
- (3) Except for this Subsection (3) and Part 24, Unlawful Conduct and Penalties, the provisions of this chapter do not apply to:
 - (a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art Act;
 - (b) a grant;
 - (c) medical supplies or medical equipment, including service agreements for medical equipment, obtained by the University of Utah Hospital or the Department of Health and Human Services through a purchasing consortium if:
 - (i) the consortium uses a competitive procurement process; and
 - (ii) the chief administrative officer of the hospital or the executive director of the Department of Health and Human Services, as the case may be, makes a written finding that the prices for purchasing medical supplies and medical equipment through the consortium are competitive with market prices;
 - (d) the purchase of firefighting supplies or equipment by the Division of Forestry, Fire, and State Lands, created in Section 65A-1-4, through the federal General Services Administration or the National Fire Cache system;
 - (e) supplies purchased for resale to the public;

- (f) activities related to the management of investments by a public entity granted investment authority by law; or
 - (g) activities of the Utah water agent appointed under Section 73-10g-702.
- (4) This chapter does not supersede the requirements for retention or withholding of construction proceeds and release of construction proceeds as provided in Section 13-8-5.
- (5) Except for this Subsection (5), the provisions of this chapter do not apply to a procurement unit's hiring a mediator, arbitrator, or arbitration panel member to participate in the procurement unit's dispute resolution efforts.

Amended by Chapter 291, 2024 General Session

Amended by Chapter 522, 2024 General Session

63G-6a-107.7 Procurement rules.

- (1)
- (a) Subject to Subsection (1)(b), the rulemaking authority for a procurement unit shall make rules relating to the management and control of procurements and procurement procedures by the procurement unit.
 - (b) Facilities division rules governing procurement of construction projects, design professional services, and leases apply to the procurement of construction projects, design professional services, and leases of real property, respectively, by the facilities division.
- (2) A rulemaking authority may not adopt rules, policies, or regulations that are inconsistent with this chapter.
- (3) An individual or body that makes rules as required or authorized in this chapter shall make the rules:
- (a) in accordance with Chapter 3, Utah Administrative Rulemaking Act, if the individual or body is subject to Chapter 3, Utah Administrative Rulemaking Act; or
 - (b) in accordance with the established process for making rules or their equivalent, if the individual or body is not subject to Chapter 3, Utah Administrative Rulemaking Act.
- (4) The rules of the rulemaking authority for the executive branch procurement unit shall require, for each contract and request for proposals, the inclusion of a clause that requires the issuing procurement unit, for the duration of the contract, to make available contact information of the winning contractor to the Department of Workforce Services in accordance with Section 35A-2-203. This requirement does not preclude a contractor from advertising job openings in other forums throughout the state.
- (5) The Department of Transportation may make rules governing the procurement of a highway construction project or highway improvement project.
- (6) The rulemaking authority for a public transit district may make rules governing the procurement of a transit construction project or a transit improvement project.
- (7) The Department of Health and Human Services may make rules governing the procurement of a human services procurement item.

Amended by Chapter 291, 2024 General Session

63G-6a-107.8 Facilities division report to legislative interim committee.

The facilities division shall make a report on or before July 1 of each year to a legislative interim committee designated by the Legislative Management Committee, created under Section 36-12-6, on the establishment, implementation, and enforcement of the rules made by the facilities division under this chapter.

Amended by Chapter 369, 2023 General Session

63G-6a-108 Limitations on and responsibility of executive branch procurement units.

- (1) An executive branch procurement unit may not engage in a procurement unless:
 - (a) the procurement is made under the direction and control of the division; or
 - (b) the procurement is made under Section 63G-6a-106.
- (2) An executive branch procurement unit that conducts any part of a procurement under this chapter is responsible to conduct that part of the procurement in compliance with this chapter.

Amended by Chapter 196, 2014 General Session

63G-6a-109 Issuing procurement unit and conducting procurement unit.

- (1) With respect to a procurement by an executive branch procurement unit, except for a procurement by an executive branch procurement unit that, under Subsection 63G-6a-103(38) (b), (c), (d), or (e), is designated as an independent procurement unit:
 - (a) the division is the issuing procurement unit; and
 - (b) the executive branch procurement unit is the conducting procurement unit and is responsible to ensure that the procurement is conducted in compliance with this chapter.
- (2) With respect to a procurement by any other procurement unit, the procurement unit is both the issuing procurement unit and the conducting procurement unit.
- (3) A conducting procurement unit is responsible for contract administration.

Amended by Chapter 421, 2022 General Session

63G-6a-109.5 Approval of acquisitions of information technology.

- (1) As used in this section:
 - (a) "Chief information officer" means the director of the Division of Technology Services, created in Section 63A-16-103.
 - (b) "Department" means the Department of Government Operations, created in Section 63A-1-104.
- (2)
 - (a) In accordance with Subsection (3), the chief information officer shall approve the acquisition by an executive branch agency of:
 - (i) information technology equipment;
 - (ii) telecommunications equipment;
 - (iii) software;
 - (iv) services related to the items described in Subsections (2)(a)(i) through (iii); and
 - (v) data acquisition.
 - (b) The chief information officer may negotiate the purchase, lease, or rental of private or public information technology or telecommunication services or facilities in accordance with this section.
 - (c) Where practical, efficient, and economically beneficial, the chief information officer shall use existing private and public information technology or telecommunication resources.
 - (d) In accordance with Section 63A-16-206, the chief information officer may recommend coordination of acquisitions between two or more executive branch agencies if the coordination is in the best interests of the state.

- (e) An acquisition approved under this section shall comply with rules made by the applicable rulemaking authority under Chapter 6a, Utah Procurement Code.
- (3) Before a conducting procurement unit negotiates a purchase, lease, or rental under Subsection (2) for an amount that exceeds the value established by the chief information officer by rule made in accordance with Section 63A-16-205, the chief information officer shall:
 - (a) conduct an analysis of the needs of executive branch agencies and subscribers of services and the ability of the proposed information technology or telecommunications services or supplies to meet those needs; and
 - (b) for purchases, leases, or rentals not covered by an existing statewide contract, certify in writing to the chief procurement officer in the Division of Purchasing and General Services that:
 - (i) the analysis required in Subsection (3)(a) was completed; and
 - (ii) based on the analysis, the proposed purchase, lease, rental, or master contract of services, products, or supplies is practical, efficient, and economically beneficial to the state and the executive branch agency or subscriber of services.
- (4) The chief information officer shall approve an acquisition described in Subsection (2) or (3) if the acquisition complies with:
 - (a) the applicable rules and policies described in Section 63A-16-205;
 - (b) the executive branch strategic plan;
 - (c) the applicable agency information technology plan;
 - (d) the budget for the executive branch agency or department as adopted by the Legislature;
 - (e) Chapter 6a, Utah Procurement Code; and
 - (f) the information technology accessibility standards described in Section 63A-16-209.
- (5) Each executive branch agency shall provide the chief information officer with complete access to all information technology records, documents, and reports:
 - (a) at the request of the chief information officer; and
 - (b) related to the executive branch agency's acquisition of an item described in Subsection (2).
- (6)
 - (a) In accordance with administrative rules established by the chief information officer under Section 63A-16-205, an executive branch agency and the department may not initiate a new technology project unless the technology project is described in a formal project plan and a business case analysis is approved by the chief information officer and the highest ranking executive branch agency official.
 - (b) The project plan and business case analysis required under this Subsection (6) shall include:
 - (i) a statement of work to be done and existing work to be modified or displaced;
 - (ii) the total cost of the system development and conversion effort, including system analysis and programming costs, establishment of master files, testing, documentation, special equipment cost, and all other costs, including overhead;
 - (iii) the savings or added operating costs that will result after conversion;
 - (iv) a description of the other advantages or reasons that justify the work;
 - (v) the source of funding of the work, including ongoing costs;
 - (vi) a description of the project's consistency with budget submissions and planning components of budgets; and
 - (vii) a statement regarding whether the work is within the scope of projects or initiatives envisioned when the current fiscal year budget was approved.
 - (c) The chief information officer shall determine the required form of the project plan and business case analysis described in this Subsection (6).

- (7) Subject to Subsection (9), the chief information officer and the Division of Purchasing and General Services within the department shall work cooperatively to establish procedures under which the chief information officer shall monitor and approve acquisitions under this section.
- (8) In addition to the requirement that the chief information officer approve the acquisitions described in Subsections (2) and (3), the Division of Technology Services shall, subject to Subsection (9), assist and support executive branch agencies in the acquisition of all technology services and products.
- (9) In relation to the acquisition of technology services or products:
 - (a) the requirement of approval by the chief information officer, as described in this section, and the assistance and support of the Division of Technology Services described in Subsection (8), do not make the chief information officer, the department, or the Division of Technology Services responsible to manage the contract or fund the procurement;
 - (b) contract management is the responsibility of the conducting procurement unit; and
 - (c) funding of the procurement is the responsibility of the executive branch agency acquiring the technology services or products.

Renumbered and Amended by Chapter 43, 2023 General Session

63G-6a-111 Purpose of specifications.

- (1) All specifications shall seek to promote the overall economy and best use for the purposes intended and encourage competition in satisfying the needs of the procurement unit, and may not be unduly restrictive.
- (2) The requirements of this part regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications, including those prepared by architects, engineers, designers, and draftsmen for public contracts.

Renumbered and Amended by Chapter 355, 2016 General Session

63G-6a-112 Required public notice.

- (1) A procurement unit that issues a solicitation shall post notice of the solicitation:
 - (a) at least seven days before the day of the deadline for submission of a solicitation response; and
 - (b)
 - (i) on the main website for the procurement unit; or
 - (ii) on a state website that is owned, managed by, or provided under contract with, the division for posting a public procurement notice.
- (2) A procurement unit may reduce the seven-day period described in Subsection (1), if the procurement unit's procurement official signs a written statement that:
 - (a) states that a shorter time is needed; and
 - (b) determines that competition from multiple sources may be obtained within the shorter period of time.
- (3)
 - (a) It is the responsibility of a person seeking information provided by a notice published under this section to seek out, find, and respond to the notice.
 - (b) As a courtesy and in order to promote competition, a procurement unit may provide, but is not required to provide, individual notice.

Amended by Chapter 355, 2021 General Session

63G-6a-113 Price based on established terms.

A procurement unit acquiring a procurement item may establish the price of the procurement item based on:

- (1) a price list, rate schedule, or price catalog:
 - (a) submitted by a vendor and accepted by the procurement unit; or
 - (b) mandated by the procurement unit or a federal agency; or
- (2) a federal regulation for a health and human services program.

Enacted by Chapter 355, 2016 General Session

63G-6a-114 Correcting an immaterial error in a solicitation response.

- (1) A procurement unit may allow a vendor to correct an immaterial error in a responsive solicitation response as provided in this section.
- (2)
 - (a) A procurement unit that allows a vendor to correct an immaterial error in a responsive solicitation response shall:
 - (i) require the vendor to submit the correction in writing; and
 - (ii) establish a deadline by which the vendor is required to correct the immaterial error.
 - (b) A procurement unit may not allow a vendor to correct an immaterial error in a responsive solicitation response after the deadline established under Subsection (2)(a).

Amended by Chapter 257, 2020 General Session

63G-6a-115 Clarifying information in a solicitation response.

- (1) A procurement unit may at any time make a written request to a vendor to:
 - (a) clarify information contained in a responsive solicitation response; or
 - (b) provide additional information that the procurement unit determines the procurement unit needs to determine whether the vendor is responsible.
- (2)
 - (a) A procurement unit that requests a vendor to clarify or provide additional information under this section shall establish a deadline by which the vendor is required to submit the clarifying or additional information.
 - (b) A procurement unit may not allow a vendor to submit clarifying or additional information after the deadline established under Subsection (2)(a).

Amended by Chapter 257, 2020 General Session

63G-6a-116 Procurement of administrative law judge service.

- (1) As used in this section:
 - (a) "Administrative law judge" means the same as that term is defined in Section 63A-17-701.
 - (b) "Administrative law judge service" means service provided by an administrative law judge.
- (2) A procurement unit shall use a standard procurement process under this chapter for the procurement of administrative law judge service.
- (3) For a procurement of administrative law judge service, an evaluation committee shall consist of:
 - (a) the head of the conducting procurement unit, or the head's designee;

- (b) the head of an executive branch procurement unit other than the conducting procurement unit, appointed by the director of the Division of Human Resource Management, or the head's designee; and
 - (c) the director of the Division of Human Resource Management, or the director's designee.
- (4) Within 30 days after the day on which a conducting procurement unit awards a contract for administrative law judge service, the conducting procurement unit shall give written notice to the Division of Human Resource Management that states:
- (a) that the conducting procurement unit awarded a contract for administrative law judge service;
 - (b) the name of the conducting procurement unit; and
 - (c) the expected term of the contract.
- (5) A procurement of administrative law judge service using a small purchase process is subject to rules made pursuant to Subsection 63G-6a-506(2)(c).

Amended by Chapter 344, 2021 General Session

63G-6a-117 Sale of previously purchased procurement item -- Limitations.

- (1) As used in this section:
- (a) "Buyback purchaser" means a person who buys a procurement item from the procurement unit to which the person previously sold the procurement item.
 - (b) "Excess repurchase amount" means the difference between:
 - (i) the amount a buyback purchaser pays to a procurement unit to purchase a procurement item that the buyback purchaser previously sold to the procurement unit; and
 - (ii) the amount the procurement unit paid to the buyback purchaser to purchase the procurement item.
- (2) A procurement unit that sells a procurement item to a buyback purchaser for an amount that exceeds the amount the procurement unit paid for the procurement item:
- (a) shall require the buyback purchaser to pay cash for the procurement item;
 - (b) may not accept the excess repurchase amount in the form of a credit, discount, or other incentive on a future purchase that the procurement unit makes from the buyback purchaser; and
 - (c) may not use the excess repurchase amount to acquire an additional procurement item from the person who paid the excess repurchase amount.

Enacted by Chapter 180, 2016 General Session

63G-6a-118 Adoption of rule relating to the procurement of design professional services.

Each of the following shall adopt a rule relating to the procurement of design professional services, not inconsistent with the provisions of Part 15, Design Professional Services:

- (1) an educational procurement unit;
- (2) a conservation district;
- (3) a local building authority;
- (4) a special district;
- (5) a special service district; and
- (6) a public corporation.

Amended by Chapter 16, 2023 General Session

63G-6a-119 Cancelling a solicitation.

- (1) A procurement unit may cancel a solicitation if the procurement official determines that cancellation is in the best interests of the procurement unit.
- (2) If a procurement unit cancels a solicitation:
 - (a) the procurement official shall explain in writing the reasons for the cancellation; and
 - (b) the procurement unit shall make the written explanation described in Subsection (2)(a) available to the public for a period of one year after the cancellation.

Enacted by Chapter 257, 2020 General Session

63G-6a-120 Rejecting a solicitation response.

- (1) A procurement unit may reject a solicitation response if:
 - (a) the solicitation response:
 - (i) is not responsive;
 - (ii) violates a requirement of the solicitation; or
 - (iii) is not submitted before the deadline specified in the solicitation;
 - (b) the vendor who submitted the solicitation response:
 - (i) is not responsible;
 - (ii) is in violation of a provision of this chapter;
 - (iii) has had a previous contract with the procurement unit canceled;
 - (iv) has engaged in unethical conduct;
 - (v) is subject to an outstanding tax lien; or
 - (vi) fails to sign a contract awarded as a result of the solicitation response within:
 - (A) 90 days after the contract award, if the solicitation does not specify a deadline for the signing of the contract; or
 - (B) the time specified in the solicitation, if the solicitation specifies a deadline for the signing of the contract; or
 - (c) after the vendor submits a solicitation response there is a change in the vendor's circumstances that, if known at the time the solicitation response was submitted, would have caused the procurement unit to reject the solicitation response.
- (2) A procurement unit that rejects a solicitation response under Subsection (1) shall provide the vendor who submitted the rejected solicitation response a written statement of the reasons for the rejection.

Enacted by Chapter 257, 2020 General Session

Superseded 1/1/2025

63G-6a-121 Specific procurement restrictions relating to forced labor and restricted foreign entities.

- (1) As used in this section:
 - (a) "Forced labor" means labor from a child or an adult that is obtained through the use of force or coercion.
 - (b) "Forced labor product" means a product that was made:
 - (i) using forced labor; or
 - (ii) includes a component that was made using forced labor.
 - (c) "Restricted foreign entity" means:
 - (i) a company that is owned or directly controlled by the government of China, Iran, North Korea, or Russia;

- (ii) a company that the United States Secretary of Defense is required to list as a military company under the requirements of federal national defense authorization acts;
 - (iii) an affiliate of a company described in Subsection (1)(c)(i) or (1)(c)(ii);
 - (iv) a company, entity, or other subsidiary headquartered in the country with a commercial or defense industrial base of which a company described in Subsection (1)(c)(ii) is a part;
 - (v) a company appearing on the designated entity lists of the United States Department of Defense, United States Department of Commerce, or the Federal Communications Commission; or
 - (vi) a subsidiary of a company described in Subsection (1)(c)(i), (1)(c)(ii), or (1)(c)(v) or a country, company, or other entity described in Subsection (1)(c)(iv).
- (2)
- (a) Except as provided under Subsection (3), an executive branch procurement unit, judicial procurement unit, or legislative procurement unit may not procure:
 - (i) technology or technology services, networks, or systems from a restricted foreign entity; or
 - (ii) a forced labor product.
 - (b)
 - (i) A vendor that submits a bid or a proposal to a procurement unit described in Subsection (2)(a) for a contract involving technology or technology services, networks, or systems, shall certify that the vendor is not a restricted foreign entity.
 - (ii) A vendor that submits a bid or proposal to a procurement unit described in Subsection (2)(a) for a contract involving a product shall certify that the product is not a forced labor product.
- (3)
- (a) Except as provided under Subsection (3)(b), a procurement unit described in Subsection (2)(a) shall reject a bid or proposal submitted in violation of Subsection (2).
 - (b) A procurement unit described in Subsection (2)(a) is not required to comply with the requirements described in Subsection (2) if:
 - (i) the procurement unit has determined that there are no other reasonable options for the procurement; or
 - (ii) the product or service, or the contract pertaining to the product or service, was obtained or entered into before May 1, 2024.
- (4) The board may make rules in accordance with Chapter 3, Utah Administrative Rulemaking Act, to address procurement restrictions relating to restricted foreign entities and forced labor products.

Enacted by Chapter 495, 2024 General Session

Effective 1/1/2025

63G-6a-121 Specific procurement restrictions relating to forced labor and restricted foreign entities.

- (1) As used in this section:
- (a) "Forced labor" means labor from a child or an adult that is obtained through the use of force or coercion.
 - (b) "Forced labor product" means a product that was made:
 - (i) using forced labor; or
 - (ii) includes a component that was made using forced labor.
 - (c) "Restricted foreign entity" means:
 - (i) a company that is owned or directly controlled by the government of China, Iran, North Korea, or Russia;

- (ii) a company that the United States Secretary of Defense is required to list as a military company under the requirements of federal national defense authorization acts;
 - (iii) an affiliate of a company described in Subsection (1)(c)(i) or (1)(c)(ii);
 - (iv) a company, entity, or other subsidiary headquartered in the country with a commercial or defense industrial base of which a company described in Subsection (1)(c)(ii) is a part;
 - (v) a company appearing on the designated entity lists of the United States Department of Defense, United States Department of Commerce, or the Federal Communications Commission; or
 - (vi) a subsidiary of a company described in Subsection (1)(c)(i), (1)(c)(ii), or (1)(c)(v) or a country, company, or other entity described in Subsection (1)(c)(iv).
- (2)
- (a) Except as provided under Subsection (3), an executive branch procurement unit, judicial procurement unit, or legislative procurement unit may not procure:
 - (i) technology or technology services, networks, or systems from a restricted foreign entity; or
 - (ii) a forced labor product.
 - (b)
 - (i) A vendor that submits a bid or a proposal to a procurement unit described in Subsection (2)(a) for a contract involving technology or technology services, networks, or systems, shall certify that the vendor is not a restricted foreign entity.
 - (ii) A vendor that submits a bid or proposal to a procurement unit described in Subsection (2)(a) for a contract involving a product shall certify that the product is not a forced labor product.
- (3)
- (a) Except as provided under Subsection (3)(b), a procurement unit described in Subsection (2)(a) shall reject a bid or proposal submitted in violation of Subsection (2).
 - (b) A procurement unit described in Subsection (2)(a) is not required to comply with the requirements described in Subsection (2) if:
 - (i) the procurement unit has determined that there are no other reasonable options for the procurement; or
 - (ii) the product or service, or the contract pertaining to the product or service, was obtained or entered into before May 1, 2024.
- (4) The board may make rules in accordance with Chapter 3, Utah Administrative Rulemaking Act, to address procurement restrictions relating to restricted foreign entities and forced labor products.
- (5) Notwithstanding this section, a procurement of an unmanned aircraft system is governed by Title 72, Chapter 10, Part 12, Prohibition on the Purchase of Unmanned Aircraft Manufactured or Assembled by a Covered Foreign Entity.

Part 2

Utah State Procurement Policy Board

63G-6a-201 Title.

This part is known as "Utah State Procurement Policy Board."

Amended by Chapter 445, 2013 General Session

63G-6a-202 Creation of Utah State Procurement Policy Board.

- (1) There is created the Utah State Procurement Policy Board.
- (2) The board consists of up to 15 members as follows:
 - (a) two representatives of state institutions of higher education, whom the commissioner of higher education, under the direction of the Utah Board of Higher Education, appoints;
 - (b) a representative of the Department of Human Services, whom the executive director of that department appoints;
 - (c) a representative of the Department of Transportation, whom the executive director of that department appoints;
 - (d) two representatives of school districts, whom the State Board of Education appoints;
 - (e) a representative of the Division of Facilities Construction and Management, whom the director of that division appoints;
 - (f) one representative of a county, whom the Utah Association of Counties appoints;
 - (g) one representative of a city or town, whom the Utah League of Cities and Towns appoints;
 - (h) two representatives of special districts or special service districts, whom the Utah Association of Special Districts appoints;
 - (i) the director of the Division of Technology Services or the executive director's designee;
 - (j) the chief procurement officer or the chief procurement officer's designee; and
 - (k) two representatives of state agencies, other than a state agency already represented on the board, whom the executive director of the Department of Government Operations, with the approval of the executive director of the state agency that employs the employee, appoints.
- (3) Members of the board shall be knowledgeable and experienced in, and have supervisory responsibility for, procurement in their official positions.
- (4) A board member may serve as long as the member meets the description in Subsection (2) unless removed by the person or entity with the authority to appoint the board member.
- (5)
 - (a) The board shall:
 - (i) adopt rules of procedure for conducting its business; and
 - (ii) elect a chair to serve for one year.
 - (b) The chair of the board shall be selected by a majority of the members of the board and may be elected to succeeding terms.
 - (c) The chief procurement officer shall designate an employee of the division to serve as the nonvoting secretary to the policy board.
- (6) A member of the board 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 pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 378, 2024 General Session

63G-6a-203 Powers and duties of board.

- (1) In addition to making rules in accordance with Section 63G-6a-107.7 and the other provisions of this chapter, the board shall consider and decide matters of policy within the provisions of this chapter, including those referred to it by the chief procurement officer.
- (2)
 - (a) The board may:
 - (i) audit and monitor the implementation of its rules and the requirements of this chapter;

- (ii) upon the request of a procurement unit with a rulemaking authority other than the board, review the procurement unit's proposed rules to ensure that they are not inconsistent with the provisions of this chapter or rules made by the board; and
 - (iii) approve the use of innovative procurement processes.
- (b) Except as provided in Section 63G-6a-1702, the board may not exercise authority over:
- (i) the award or administration of any particular contract; or
 - (ii) any dispute, claim, or litigation pertaining to any particular contract.
- (3) Except as otherwise expressly provided in this chapter, the board does not have authority over a matter involving an independent procurement unit.

Amended by Chapter 257, 2020 General Session

63G-6a-204 Applicability of rules of Utah State Procurement Policy Board and Division of Facilities Construction and Management -- Report to interim committee.

- (1) Except as provided in Subsection (2), rules made by the board under this chapter shall govern all procurement units for which the board is the rulemaking authority.
- (2) The facilities division rules governing procurement of construction, design professional services, and leases apply to the procurement of construction, design professional services, and leases of real property by the facilities division.
- (3) A rulemaking authority may make its own rules, consistent with this chapter, governing procurement by a person over which the rulemaking authority has rulemaking authority.
- (4) The board shall make a report on or before July 1 of each year to a legislative interim committee, designated by the Legislative Management Committee created under Section 36-12-6, on the establishment, implementation, and enforcement of the rules made under Section 63G-6a-203.

Amended by Chapter 421, 2022 General Session

63G-6a-205 Procurement advisory councils.

The chief procurement officer may appoint advisory councils to provide advice regarding any matters within the authority of the chief procurement officer.

Renumbered and Amended by Chapter 347, 2012 General Session

**Part 3
Chief Procurement Officer**

63G-6a-301 Title.

This part is known as "Chief Procurement Officer."

Enacted by Chapter 347, 2012 General Session

63G-6a-302 Chief procurement officer -- Qualifications -- Authority.

- (1) The chief procurement officer shall:
 - (a) have a minimum of eight years' experience:
 - (i)

- (A) in the large-scale procurement of supplies, services, or construction; or
 - (B) negotiating contract terms and conditions; and
 - (ii) at least five years of which shall have been in public or comparable private procurement within 12 years preceding the date of appointment; and
 - (b) be a person with demonstrated executive and organizational ability.
- (2) The chief procurement officer is also the director of the Division of Purchasing and General Services.
- (3) The chief procurement officer has authority over a procurement by a procurement unit, except:
- (a) an independent procurement unit; or
 - (b) as otherwise expressly provided in this chapter.

Amended by Chapter 344, 2021 General Session

63G-6a-303 Role, duties, and authority of chief procurement officer.

- (1) The chief procurement officer:
- (a) is the director of the division;
 - (b) serves as the central procurement officer of the state;
 - (c) serves as a voting member of the board; and
 - (d) serves as the protest officer for a protest relating to a procurement of an executive branch procurement, except an executive branch procurement unit designated under Subsection 63G-6a-103(38)(b), (c), (d), or (e) as an independent procurement unit, or a state cooperative contract procurement, unless the chief procurement officer designates another to serve as protest officer, as authorized in this chapter.
- (2) Except as otherwise provided in this chapter, the chief procurement officer shall:
- (a) develop procurement policies and procedures supporting ethical procurement practices, fair and open competition among vendors, and transparency within the state's procurement process;
 - (b) administer the state's cooperative purchasing program, including state cooperative contracts and associated administrative fees;
 - (c) enter into an agreement with a public entity for services provided by the division, if the agreement is in the best interest of the state;
 - (d) ensure the division's compliance with any applicable law, rule, or policy, including a law, rule, or policy applicable to the division's role as an issuing procurement unit or conducting procurement unit, or as the state's central procurement organization;
 - (e) manage the division's electronic procurement system;
 - (f) oversee the recruitment, training, career development, certification requirements, and performance evaluation of the division's procurement personnel;
 - (g) make procurement training available to procurement units and persons who do business with procurement units;
 - (h) provide exemplary customer service and continually improve the division's procurement operations;
 - (i) exercise all other authority, fulfill all other duties and responsibilities, and perform all other functions authorized under this chapter; and
 - (j) ensure that any training described in this Subsection (2) complies with Chapter 22, State Training and Certification Requirements.
- (3) With respect to a procurement or contract over which the chief procurement officer has authority under this chapter, the chief procurement officer, except as otherwise provided in this chapter:

(a) shall:

- (i) manage and supervise a procurement to ensure to the extent practicable that taxpayers receive the best value;
- (ii) prepare and issue standard specifications for procurement items;
- (iii) review contracts, coordinate contract compliance, conduct contract audits, and approve change orders;
- (iv) in accordance with Section 63G-6a-109.5, coordinate with the Division of Technology Services, created in Section 63A-16-103, with respect to the procurement of information technology services by an executive branch procurement unit;
- (v) correct, amend, or cancel a procurement at any stage of the procurement process if the procurement is out of compliance with this chapter or a board rule;
- (vi) after consultation with the attorney general's office, correct, amend, or cancel a contract at any time during the term of the contract if:
 - (A) the contract is out of compliance with this chapter or a board rule; and
 - (B) the chief procurement officer determines that correcting, amending, or canceling the contract is in the best interest of the state; and
- (vii) make a reasonable attempt to resolve a contract dispute, in coordination with the attorney general's office; and

(b) may:

- (i) delegate limited purchasing authority to a state agency, with appropriate oversight and control to ensure compliance with this chapter;
 - (ii) delegate duties and authority to an employee of the division, as the chief procurement officer considers appropriate;
 - (iii) negotiate and settle contract overcharges, undercharges, and claims, in accordance with the law and after consultation with the attorney general's office;
 - (iv) authorize a procurement unit to make a procurement pursuant to a regional solicitation, as defined in Subsection 63G-6a-2105(7), even if the procurement item is also offered under a state cooperative contract, if the chief procurement officer determines that the procurement pursuant to a regional solicitation is in the best interest of the acquiring procurement unit; and
 - (v) remove an individual from the procurement process or contract administration for:
 - (A) having a conflict of interest or the appearance of a conflict of interest with a person responding to a solicitation or with a contractor;
 - (B) having a bias or the appearance of bias for or against a person responding to a solicitation or for or against a contractor;
 - (C) making an inconsistent or unexplainable score for a solicitation response;
 - (D) having inappropriate contact or communication with a person responding to a solicitation;
 - (E) socializing inappropriately with a person responding to a solicitation or with a contractor;
 - (F) engaging in any other action or having any other association that causes the chief procurement officer to conclude that the individual cannot fairly evaluate a solicitation response or administer a contract; or
 - (G) any other violation of a law, rule, or policy.
- (4) The chief procurement officer may not delegate to an individual outside the division the chief procurement officer's authority over a procurement described in Subsection (3)(a)(iv).
- (5) The chief procurement officer has final authority to determine whether an executive branch procurement unit's anticipated expenditure of public funds, anticipated agreement to expend public funds, or provision of a benefit constitutes a procurement that is subject to this chapter.

- (6) Except as otherwise provided in this chapter, the chief procurement officer shall review, monitor, and audit the procurement activities and delegated procurement authority of an executive branch procurement unit, except to the extent that an executive branch procurement unit is designated under Subsection 63G-6a-103(38)(b), (c), (d), or (e) as an independent procurement unit, to ensure compliance with this chapter, rules made by the applicable rulemaking authority, and division policies.

Amended by Chapter 43, 2023 General Session

63G-6a-304 Delegation of authority.

In accordance with rules made by the board, the chief procurement officer may delegate authority to designees or to any department, agency, or official.

Amended by Chapter 81, 2018 General Session

63G-6a-305 Duty of chief procurement officer in maintaining specifications.

- (1) The chief procurement officer may prepare, issue, revise, maintain, and monitor the use of specifications for each procurement over which the chief procurement officer has authority.
- (2) The chief procurement officer shall obtain expert advice and assistance from personnel of procurement units in the development of specifications and may delegate in writing to a procurement unit the authority to prepare and utilize its own specifications.

Amended by Chapter 81, 2018 General Session

Part 4 Supplemental Procurement Procedures

63G-6a-401 Title.

This part is known as "Supplemental Procurement Procedures."

Amended by Chapter 355, 2016 General Session

63G-6a-409 Request for information.

- (1) A procurement unit may issue a request for information to obtain information, comments, or suggestions before issuing a solicitation.
- (2)
 - (a) A request for information is not a procurement process and may not be used to:
 - (i) negotiate fees;
 - (ii) make a purchase;
 - (iii) determine whether a procurement may be made under Part 8, Exceptions to Procurement Requirements; or
 - (iv) enter into a contract.
 - (b) To make a purchase or enter into a contract, a procurement unit is required to:
 - (i) use a standard procurement process; or
 - (ii) comply with an exception to the requirement to use a standard procurement process, as described in Part 8, Exceptions to Procurement Requirements.

- (3) A response to a request for information is not an offer and may not be accepted to form a binding contract.
- (4) A procurement unit that receives pricing information in response to a request for information shall ensure that an individual who serves on an evaluation committee to evaluate proposals that include a proposal as to which the pricing information applies does not have access to the pricing information, except as provided in Subsection 63G-6a-707(7).
- (5) A record containing information submitted to or by a governmental entity in response to a request for information is a protected record under Section 63G-2-305.

Amended by Chapter 257, 2020 General Session

63G-6a-410 Request for statement of qualifications -- Process.

- (1)
 - (a) A procurement unit may use the process described in this section:
 - (i) as one of the stages of a multiple-stage standard procurement process; and
 - (ii) to identify qualified vendors to participate in other stages of the multiple-stage procurement process.
 - (b) A procurement unit shall use the process described in this section as part of the approved vendor list process, if the procurement unit intends to establish an approved vendor list.
- (2) A procurement unit may not:
 - (a) award a contract based solely on the process described in this section; or
 - (b) solicit costs, pricing, or rates or negotiate fees through the process described in this section.
- (3) The process of identifying qualified vendors in a multiple-stage standard procurement process or of establishing an approved vendor list under Section 63G-6a-507 is initiated by a procurement unit issuing a request for statement of qualifications.
- (4) A request for statement of qualifications in a multiple-stage standard procurement process shall include:
 - (a) a statement indicating that participation in other stages of the multiple-stage standard procurement process will be limited to qualified vendors;
 - (b) the minimum mandatory requirements, evaluation criteria, and applicable score thresholds that will be used to identify qualified vendors, including, as applicable:
 - (i) experience and work history;
 - (ii) management and staff requirements or standards;
 - (iii) licenses, certifications, and other qualifications;
 - (iv) performance ratings or references;
 - (v) financial stability; and
 - (vi) other information pertaining to vendor qualifications that the procurement official considers relevant or important; and
 - (c) the deadline by which a vendor is required to submit a statement of qualifications.
- (5) A request for statement of qualifications in an approved vendor list process under Section 63G-6a-507 shall include:
 - (a) a general description of, as applicable:
 - (i) the procurement item that the procurement unit seeks to acquire;
 - (ii) the type of project or scope or category of work that will be the subject of a procurement by the procurement unit;
 - (iii) the procurement process the procurement unit will use to acquire the procurement item; and
 - (iv) the type of vendor the procurement unit seeks to provide the procurement item;

- (b) the minimum mandatory requirements, evaluation criteria, and applicable score thresholds that vendors are required to meet to be included on the approved vendor list;
 - (c) a statement indicating that the approved vendor list will include only responsible vendors that:
 - (i) submit a responsive statement of qualifications; and
 - (ii) meet the minimum mandatory requirements, evaluation criteria, and applicable score thresholds described in the request for statement of qualifications;
 - (d) a statement indicating that only vendors on the approved vendor list will be able to participate in the procurements identified in the request for statement of qualifications;
 - (e) a statement indicating whether the procurement unit will use a performance rating system for evaluating the performance of vendors on the approved vendor list, including whether a vendor on the approved vendor list may be disqualified and removed from the list;
 - (f)
 - (i) a statement indicating whether the procurement unit uses a closed-ended approved vendor list, as defined in Section 63G-6a-507, or an open-ended approved vendor list, as defined in Section 63G-6a-507; and
 - (ii)
 - (A) if the procurement unit uses a closed-ended approved vendor list, the deadline by which a vendor is required to submit a statement of qualifications and a specified period of time after which the approved vendor list will expire; or
 - (B) if the procurement unit uses an open-ended approved vendor list, the deadline by which a vendor is required to submit a statement of qualifications to be considered for the initial approved vendor list, a schedule indicating when a vendor not on the initial approved vendor list may submit a statement of qualifications to be considered to be added to the approved vendor list, and the specified period of time after which a vendor is required to submit a new statement of qualifications for evaluation before the vendor's status as an approved vendor on the approved vendor list may be renewed; and
 - (g) a description of any other criteria or requirements specific to the procurement item or scope of work that is the subject of the procurement.
- (6) A procurement unit issuing a request for statement of qualifications shall publish the request as provided in Section 63G-6a-112.
- (7) After the deadline for submitting a statement of qualifications, the procurement official may allow a vendor to correct an immaterial error in a statement of qualifications, as provided in Section 63G-6a-114.
- (8)
 - (a) A conducting procurement unit may reject a statement of qualifications if the conducting procurement unit determines that:
 - (i) the vendor who submitted the statement of qualifications:
 - (A) is not responsible;
 - (B) is in violation of a provision of this chapter;
 - (C) has engaged in unethical conduct; or
 - (D) receives a performance rating below the satisfactory performance threshold specified in the request for statement of qualifications;
 - (ii) there has been a change in the vendor's circumstances after the vendor submits a statement of qualifications that, if the change had been known at the time the statement of qualifications was evaluated, would have caused the statement of qualifications not to have received a qualifying score; or
 - (iii) the statement of qualifications:
 - (A) is not responsive; or

- (B) does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds stated in the request for statement of qualifications.
- (b) A procurement unit that rejects a statement of qualifications under Subsection (8)(a) shall:
 - (i) make a written finding, stating the reasons for the rejection; and
 - (ii) provide a copy of the written finding to the vendor that submitted the rejected statement of qualifications.
- (9)
 - (a)
 - (i) After the issuance of a request for statement of qualifications, the conducting procurement unit shall appoint an evaluation committee consisting, subject to Subsection (9)(b), of at least three individuals with at least a general familiarity with or basic understanding of:
 - (A) the technical requirements relating to the type of procurement item that is the subject of the request for statement of qualifications; or
 - (B) the need that the procurement item is intended to address.
 - (ii) The conducting procurement unit shall ensure that each member of an evaluation committee and each individual participating in the evaluation committee process:
 - (A) does not have a conflict of interest with any vendor that submits a statement of qualifications;
 - (B) can fairly evaluate each statement of qualifications;
 - (C) does not contact or communicate with a vendor concerning the evaluation process or procurement outside the official evaluation committee process; and
 - (D) conducts or participates in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.
 - (b) A procurement unit may reduce the number of individuals appointed to an evaluation committee if the procurement official determines in writing that the evaluation criteria:
 - (i) consist of only objective criteria; and
 - (ii) do not include any subjective criterion that requires analysis, assessment, or deliberation.
 - (c) A conducting procurement unit may authorize an evaluation committee to receive assistance:
 - (i) from an expert or consultant who:
 - (A) is not a member of the evaluation committee; and
 - (B) does not participate in the evaluation scoring; and
 - (ii) to better understand a technical issue involved in the procurement.
 - (d) An evaluation committee appointed under this Subsection (9):
 - (i) shall evaluate and score statements of qualifications submitted in response to a request for statement of qualifications using the minimum mandatory requirements, evaluation criteria, and applicable score thresholds set forth in the request for statement of qualifications;
 - (ii) may not evaluate or score a statement of qualifications using criteria not included in the request for statement of qualifications; and
 - (iii) may, with the approval of the procurement official, enter into discussions or conduct interviews with or attend presentations by vendors, for the purpose of clarifying information contained in statements of qualifications.
 - (e) In a discussion, interview, or presentation under Subsection (9)(c)(ii), a vendor:
 - (i) may only explain, illustrate, or interpret the contents of the vendor's original statement of qualifications; and
 - (ii) may not:
 - (A) address criteria or specifications not contained in the vendor's original statement of qualifications;

- (B) correct a deficiency, inaccuracy, or mistake in a statement of qualifications that is not an immaterial error;
 - (C) correct an incomplete submission of documents that the request for statement of qualifications required to be submitted with the statement of qualifications;
 - (D) correct a failure to submit a timely statement of qualifications;
 - (E) substitute or alter a required form or other document specified in the statement of qualifications;
 - (F) remedy a cause for a vendor being considered to be not responsible or a statement of qualifications not responsive; or
 - (G) correct a defect or inadequacy resulting in a determination that a vendor does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the statement of qualifications.
- (f) After the evaluation committee completes its evaluation and scoring of the statements of qualifications, the evaluation committee shall submit the statements of qualifications and evaluation scores to the procurement official for review and final determination of:
- (i) qualified vendors, if the request for statement of qualifications process is used as one of the stages of a multiple-stage process; or
 - (ii) vendors to be included on an approved vendor list, if the request for statement of qualifications process is used as part of the approved vendor list process.
- (g) The issuing procurement unit shall review the evaluation committee's scores and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter.
- (h)
- (i) The deliberations of an evaluation committee under this Subsection (9) may be held in private.
 - (ii) If the evaluation committee is a public body, as defined in Section 52-4-103, the evaluation committee shall comply with Section 52-4-205 in closing a meeting for its deliberations.
- (10) A procurement unit may at any time request a vendor to clarify information contained in a statement of qualifications, as provided in Section 63G-6a-115.
- (11) A vendor may voluntarily withdraw a statement of qualifications at any time before a contract is awarded with respect to which the statement of qualifications was submitted.
- (12) If only one vendor meets the minimum qualifications, evaluation criteria, and applicable score thresholds set forth in the request for statement of qualifications that the procurement unit is using as part of an approved vendor list process, the conducting procurement unit may:
- (a) cancel the request for statement of qualifications; or
 - (b) establish an approved vendor list that includes the one vendor if the procurement unit continues to try to identify more vendors to be included on the approved vendor list by:
 - (i) keeping the request for statement of qualifications open; or
 - (ii) immediately reissuing the request for statement of qualifications and repeating the process under this section.
- (13) If a conducting procurement unit cancels a request for statement of qualifications, the conducting procurement unit shall make available for public inspection a written justification for the cancellation.
- (14) After receiving and reviewing the statements of qualifications and evaluation scores submitted by the evaluation committee, the procurement official of the procurement unit using the request for statement of qualifications process under this section as one of the stages of a multiple-stage procurement process shall identify those vendors meeting the minimum mandatory requirements, evaluation criteria, and applicable score thresholds as qualified vendors who are allowed to participate in the remaining stages of the multiple-stage procurement process.

- (15) The rulemaking authority may make rules pertaining to the request for statement of qualifications and the process described in this section.

Amended by Chapter 257, 2020 General Session

Part 5

Other Standard Procurement Processes

63G-6a-501 Title.

This part is known as "Other Standard Procurement Processes."

Amended by Chapter 355, 2016 General Session

63G-6a-506 Small purchases.

(1) As used in this section:

- (a) "Annual cumulative threshold" means the maximum total annual amount, established by the rulemaking authority under Subsection (2), that a procurement unit may expend to obtain procurement items from the same source under this section.
- (b) "Individual procurement threshold" means the maximum amount, established by the rulemaking authority under Subsection (2), for which a procurement unit may purchase a procurement item under this section.
- (c) "Single procurement aggregate threshold" means the maximum total amount, established by the rulemaking authority under Subsection (2), that a procurement unit may expend to obtain multiple procurement items from one source at one time under this section.

(2)

- (a) The rulemaking authority may make rules governing small purchases of any procurement item, including construction, job order contracting, design professional services, other professional services, information technology, and goods.
 - (b) Rules under Subsection (2)(a) may include provisions:
 - (i) establishing expenditure thresholds, including:
 - (A) an annual cumulative threshold;
 - (B) an individual procurement threshold; and
 - (C) a single procurement aggregate threshold;
 - (ii) establishing procurement requirements relating to the thresholds described in Subsection (2)(b)(i); and
 - (iii) providing for the use of electronic, telephone, or written quotes.
 - (c) If a procurement unit obtains administrative law judge service through a small purchase standard procurement process, rules made under Subsection (2)(a) shall provide that the process for the procurement of administrative law judge service include an evaluation committee described in Subsection 63G-6a-116(3).
- (3) Expenditures made under this section by a procurement unit may not exceed a threshold established by the rulemaking authority, unless the procurement official gives written authorization to exceed the threshold that includes the reasons for exceeding the threshold.
- (4) Except as provided in Subsection (5), an executive branch procurement unit may not obtain a procurement item through a small purchase standard procurement process if the procurement

item may be obtained through a state cooperative contract or a contract awarded by the chief procurement officer under Subsection 63G-6a-2105(1).

- (5) Subsection (4) does not apply if:
- (a) the procurement item is obtained for an unanticipated, urgent, or emergency condition, including:
 - (i) an item needed to avoid stopping a public construction project;
 - (ii) an immediate repair to a facility or equipment; or
 - (iii) another emergency condition; or
 - (b) the chief procurement officer or the procurement official of a procurement unit that is an executive branch procurement unit with independent procurement authority:
 - (i) determines in writing that it is in the best interest of the procurement unit to obtain an individual procurement item outside of the state contract, comparing:
 - (A) the contract terms and conditions applicable to the procurement item under the state contract with the contract terms and conditions applicable to the procurement item if the procurement item is obtained outside of the state contract;
 - (B) the maintenance and service applicable to the procurement item under the state contract with the maintenance and service applicable to the procurement item if the procurement item is obtained outside of the state contract;
 - (C) the warranties applicable to the procurement item under the state contract with the warranties applicable to the procurement item if the procurement item is obtained outside of the state contract;
 - (D) the quality of the procurement item under the state contract with the quality of the procurement item if the procurement item is obtained outside of the state contract; and
 - (E) the ability of the vendor under the state contract to match the quoted cost of the procurement item if the procurement item is obtained outside of the state contract;
 - (ii) for a procurement item that, if defective in its manufacture, installation, or performance, may result in serious physical injury, death, or substantial property damage, determines in writing that the terms and conditions, relating to liability for injury, death, or property damage, available from the source other than the contractor who holds the state contract, are similar to, or better than, the terms and conditions available under the state contract; and
 - (iii) grants an exception, in writing, to the requirement described in Subsection (4).
- (6) Except as otherwise expressly provided in this section, a procurement unit:
- (a) may not use the small purchase standard procurement process described in this section for ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold; and
 - (b) shall make its ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold through a contract awarded through another standard procurement process described in this chapter or an applicable exception to another standard procurement process, described in Part 8, Exceptions to Procurement Requirements.
- (7) This section does not prohibit regularly scheduled payments for a procurement item obtained under another provision of this chapter.
- (8)
- (a) It is unlawful for a person knowingly to divide a single procurement into multiple smaller procurements, including by dividing an invoice or purchase order into multiple invoices or purchase orders, if:
 - (i) the single procurement would not have qualified as a small purchase under this section;
 - (ii) one or more of the multiple smaller procurements qualify as a small purchase under this section; and

- (iii) the division is done with the intent to:
 - (A) avoid having to use a standard procurement process, other than the small purchase process, that the person would otherwise be required to use for the single procurement; or
 - (B) make one or more of the multiple smaller procurements fall below a small purchase expenditure threshold established by rule under Subsection (2)(b) that the single procurement would not have fallen below without the division.
- (b) A violation of Subsection (8)(a) is subject to penalties as provided in Subsection 63G-6a-2404.3(2).
- (9) The Division of Finance within the Department of Government Operations may conduct an audit of an executive branch procurement unit to verify compliance with the requirements of this section.
- (10) An executive branch procurement unit may not make a small purchase after January 1, 2014, unless the chief procurement officer certifies that the person responsible for procurements in the procurement unit has satisfactorily completed training on this section and the rules made under this section.

Amended by Chapter 344, 2021 General Session

63G-6a-507 Approved vendor list procurement process.

- (1) As used in this section:
 - (a) "Closed-ended approved vendor list" means an approved vendor list that is subject to:
 - (i) a short period of time, specified by the procurement unit, during which vendors may be added to the list; and
 - (ii) a specified period of time after which the list will expire.
 - (b) "Open-ended approved vendor list" means an approved vendor list that is subject to:
 - (i) an indeterminate period of time during which vendors may be added to the list;
 - (ii) the addition of vendors to the list throughout the term of the list; and
 - (iii) a specified period of time after which the procurement unit is required to verify that vendors on the list continue to meet the minimum mandatory requirements, evaluation criteria, and applicable score thresholds.
- (2) A procurement unit may not establish an approved vendor list unless the procurement unit has first completed the statement of qualifications process described in Section 63G-6a-410.
- (3)
 - (a) A procurement unit may establish an approved vendor list for:
 - (i) a specific, fully defined procurement item; or
 - (ii) a future procurement item that is not specifically and fully defined, if the request for statement of qualifications contains a general description of:
 - (A) the procurement item; and
 - (B) the type of vendor that the procurement unit seeks to provide the procurement item.
 - (b) A procurement unit may not award a contract to a vendor on an approved vendor list for a procurement item that is outside the scope of the general description of the procurement item contained in the request for statement of qualifications.
- (4) After receiving the statements of qualifications and evaluation scores submitted by the evaluation committee under Subsection 63G-6a-410(9)(f), the procurement official of the procurement unit using the request for statement of qualifications process under Section 63G-6a-410 as part of an approved vendor list process shall:
 - (a) include on an approved vendor list those vendors meeting the minimum mandatory requirements, evaluation criteria, and applicable score thresholds; and

- (b) reject any vendor not meeting the minimum mandatory requirements, evaluation criteria, and applicable score thresholds as ineligible for inclusion on the approved vendor list.
- (5)
- (a) A procurement unit shall include approved vendors on a closed-ended approved vendor list or an open-ended approved vendor list.
 - (b)
 - (i) A closed-ended approved vendor list shall expire no later than 18 months after the publication of the closed-ended approved vendor list.
 - (ii) A procurement unit shall verify, no less frequently than every 18 months, by a method approved by the procurement official, that each vendor on an open-ended approved vendor list continues to meet the minimum mandatory requirements, evaluation criteria, and applicable score thresholds.
- (6) A procurement unit may:
- (a)
 - (i) using a bidding process, request for proposals process, small purchase process, or design professional procurement process, award a contract to a vendor on an approved vendor list for any procurement item or type of procurement item specified by the procurement unit in the request for statement of qualifications, including procurement items that the procurement unit intends to acquire in a series of future procurements described in the request for statement of qualifications; and
 - (ii) limit participation in a bidding process, request for proposals process, small purchase process, or design professional procurement process to vendors on an approved vendor list; or
 - (b) award a contract to a vendor on an approved vendor list at a price established as provided in Section 63G-6a-113.
- (7)
- (a) After establishing an approved vendor list as provided in this section, a conducting procurement unit shall, before using the approved vendor list, submit the approved vendor list to the issuing procurement unit.
 - (b) An issuing procurement unit that receives an approved vendor list under Subsection (7)(a) shall make the approved vendor list available to the public.
- (8) A conducting procurement unit administering an open-ended approved vendor list shall:
- (a) require a vendor seeking inclusion on the approved vendor list to submit a statement of qualifications that complies with all requirements applicable at the time of the initial request for statement of qualifications; and
 - (b) if modifying the requirements for inclusion on the approved vendor list, apply any new or additional requirement to all vendors equally, whether a vendor is seeking inclusion on the approved vendor list for the first time or is already included on the approved vendor list.
- (9) A rulemaking authority shall make rules pertaining to an approved vendor list process, including:
- (a) procedures to ensure that all vendors on an approved vendor list have a fair and equitable opportunity to compete for a contract for a procurement item; and
 - (b) requirements for using an approved vendor list with the small purchase process.

Amended by Chapter 257, 2020 General Session

Part 6 Bidding

63G-6a-602 Contracts awarded by bidding.

A procurement unit may award a contract for a procurement item by the bidding process, in accordance with:

- (1) the rules of the rulemaking authority; and
- (2) if applicable, the requirements under Section 63G-6a-121, Specific procurement restrictions relating to forced labor and restricted foreign entities.

Amended by Chapter 495, 2024 General Session

63G-6a-603 Invitation for bids -- Requirements -- Publication.

- (1) A procurement unit that intends to award a contract for a procurement item using the bidding process shall issue an invitation for bids.
- (2) A procurement unit shall include in an invitation for bids:
 - (a) a description of the procurement item that the procurement unit seeks;
 - (b) instructions for submitting a bid, including the deadline for submitting a bid;
 - (c) the objective criteria that the procurement unit will use to evaluate bids;
 - (d) information about the time and manner of opening bids; and
 - (e) terms and conditions that the procurement unit intends to include in a contract resulting from the bidding process.
- (3) A procurement unit shall publish an invitation for bids in accordance with the requirements of Section 63G-6a-112.

Amended by Chapter 257, 2020 General Session

63G-6a-604 Processing of bids -- Changes to bids not allowed.

- (1) A procurement unit:
 - (a) shall accept bids as provided in the invitation for bids; and
 - (b) may not open a bid until after the deadline for submitting bids.
- (2) A person who submits a bid may not, after the deadline for submitting bids, make a change to the bid if the change is prejudicial to:
 - (a) the interest of the procurement unit; or
 - (b) fair competition.

Repealed and Re-enacted by Chapter 257, 2020 General Session

63G-6a-606 Evaluation of bids -- Award -- Cancellation.

- (1) A procurement unit that conducts a procurement using a bidding process shall evaluate bids:
 - (a) using the objective criteria described in the invitation for bids; and
 - (b) to achieve the greatest long-term value to the state and the procurement unit.
- (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.
- (3) After evaluating bids, the procurement unit shall:
 - (a)
 - (i) award a contract as soon as practicable to the responsible bidder who submits the lowest responsive bid; and

- (ii) publish the name and bid amount of the bidder to whom the contract is awarded; or
- (b)
 - (i) cancel the invitation for bids without awarding a contract; and
 - (ii) publish a notice of the cancellation that includes an explanation of the reasons for cancelling the invitation for bids.

Amended by Chapter 406, 2021 General Session

63G-6a-608 Tie bids.

A procurement unit shall resolve a tie bid in a fair manner, as determined in writing by the procurement official.

Repealed and Re-enacted by Chapter 257, 2020 General Session

Part 7 Request for Proposals

63G-6a-701 Title.

This part is known as "Request for Proposals."

Enacted by Chapter 347, 2012 General Session

63G-6a-702 Contracts awarded by request for proposals.

- (1) A procurement unit may award a contract for a procurement item by the request for proposals process, in accordance with:
 - (a) rulemaking authority rules; and
 - (b) if applicable, the requirements under Section 63G-6a-121, Specific procurement restrictions relating to forced labor and restricted foreign entities.
- (2) The procurement of architect-engineer services is governed by Part 15, Design Professional Services.

Amended by Chapter 495, 2024 General Session

63G-6a-703 Request for proposals -- Requirements -- Publication of request.

- (1) A procurement unit that intends to award a contract for a procurement item using the request for proposals process shall issue a request for proposals.
- (2) A procurement unit shall include in a request for proposals:
 - (a) a description of the procurement item that the procurement unit seeks;
 - (b) instructions for submitting a proposal, including the deadline for submitting a proposal;
 - (c) the objective criteria, including, if applicable, cost, and subjective criteria that the procurement unit will use to evaluate proposals;
 - (d) information about the time and manner of opening proposals; and
 - (e) terms and conditions that the procurement unit intends to include in a contract resulting from the request for proposals process.
- (3) A procurement unit shall publish a request for proposals in accordance with the requirements of Section 63G-6a-112.

Amended by Chapter 257, 2020 General Session

63G-6a-704 Processing of proposals -- Changes to proposals not allowed.

- (1) A procurement unit:
 - (a) shall accept proposals as provided in the request for proposals;
 - (b) may not open a proposal until after the deadline for submitting proposals; and
 - (c) may not disclose the contents of a proposal to the public or to another offeror, except as provided in Subsection 63G-2-305(6).
- (2) A person who submits a proposal may not, after the deadline for submitting proposals, make a change to the proposal if the change is prejudicial to:
 - (a) the interest of the procurement unit; or
 - (b) fair competition.

Repealed and Re-enacted by Chapter 257, 2020 General Session

63G-6a-704.4 Limited addenda to requests for proposals.

After the deadline for submitting proposals, a procurement unit may, at the discretion of the procurement official, issue a request for proposals addendum that has limited application only to offerors that have submitted proposals, if the addendum does not change the request for proposals in a way that, in the opinion of the procurement official, would likely have affected the number of proposals submitted in response to the request for proposals had the addendum been included in the original request for proposals.

Enacted by Chapter 257, 2020 General Session

63G-6a-704.6 Discussions with a person who submits a proposal.

- (1) A procurement unit may have discussions with an offeror to obtain a more complete understanding of whether the offeror is responsible or the offeror's proposal is responsive.
- (2) A procurement unit may reject a proposal following discussions under Subsection (1) if the procurement unit determines that the offeror is not responsible or the proposal is not responsive.

Enacted by Chapter 257, 2020 General Session

63G-6a-707 Evaluation committee -- Evaluation of proposals.

- (1) A procurement unit shall appoint an evaluation committee of at least three members to evaluate proposals received in response to a request for proposals issued by the procurement unit.
- (2) The evaluation committee shall evaluate proposals in accordance with the process described in the request for proposals.
- (3) To determine which proposal provides the best value to the procurement unit, the evaluation committee shall evaluate each responsible offeror's responsive proposal that has not been disqualified from consideration under the provisions of this chapter, using the evaluation criteria described in the request for proposals.
- (4) Criteria not described in the request for proposals may not be used to evaluate a proposal.
- (5) A procurement unit shall:
 - (a) appoint evaluation committee members who have at least a general familiarity with or basic understanding of:

- (i) the technical requirements relating to the type of procurement item that is the subject of the procurement; or
- (ii) the need that the procurement item is intended to address; and
- (b) ensure that the evaluation committee and each individual participating in the evaluation committee process:
 - (i) does not have a conflict of interest with any of the offerors;
 - (ii) can fairly evaluate each proposal;
 - (iii) does not contact or communicate with an offeror concerning the procurement outside the official evaluation committee process; and
 - (iv) conducts or participates in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.
- (6) A procurement unit may authorize an evaluation committee to receive assistance from an expert or consultant to better understand a technical issue involved in the procurement.
- (7)
 - (a) Except as provided in Subsection (7)(b), an evaluation committee member is prohibited from knowing or having access to information relating to the cost of a proposal until after the evaluation committee submits its recommendation to the procurement unit based on the scores of all criteria other than cost.
 - (b) A procurement official may waive the prohibition of Subsection (7)(a) by signing a written statement indicating why waiving the prohibition is in the best interests of the procurement unit.
- (8) An evaluation committee may not change its final recommended scores after the evaluation committee has submitted those scores to the procurement unit.
- (9)
 - (a) The deliberations and other proceedings of an evaluation committee may be held in private.
 - (b) If the evaluation committee is a public body, as defined in Section 52-4-103, the evaluation committee shall comply with Section 52-4-205 in closing a meeting for its deliberations and other proceedings.
- (10)
 - (a) At the conclusion of the evaluation process, an evaluation committee shall prepare and submit to the procurement unit a written statement that:
 - (i) recommends a proposal for an award of a contract, if the evaluation committee decides to recommend a proposal;
 - (ii) contains the score awarded to the recommended proposal based on the criteria stated in the request for proposals; and
 - (iii) explains how the recommended proposal provides the best value to the procurement unit.
 - (b) A procurement unit is not required to comply with Subsection (10)(a) for a contract with a construction manager/general contractor if the contract is awarded based solely on:
 - (i) the qualifications of the construction manager/general contractor; and
 - (ii) the management fee to be paid to the construction manager/general contractor.

Amended by Chapter 9, 2020 Special Session 5

63G-6a-707.5 Best and final offers.

- (1) The best and final offer process described in this section:
 - (a) may be used only in a request for proposals process, whether the request for proposals process is used independently or after the establishment of an approved vendor list through the approved vendor list process; and

- (b) may not be used in any other standard procurement process, whether the other standard procurement process is used independently or after the establishment of an approved vendor list through the approved vendor list process.
- (2) Subject to Subsection (3), a conducting procurement unit may request best and final offers from responsible offerors:
 - (a) only with the approval of the procurement official; and
 - (b) if:
 - (i) no single proposal adequately addresses all the specifications stated in the request for proposals;
 - (ii) all proposals are unclear or deficient in one or more respects;
 - (iii) all cost proposals exceed the identified budget or the procurement unit's available funding;
or
 - (iv) two or more proposals receive an identical evaluation score that is the highest score.
- (3) A conducting procurement unit may request a best and final offer from, and a best and final offer may be submitted to the conducting procurement unit by, only a responsible offeror that has submitted a responsive proposal that meets the minimum mandatory criteria stated in the request for proposals required to be considered in the stage of the procurement process at which best and final offers are being requested.
- (4) The best and final offer process may not be used to change:
 - (a) a determination that an offeror is not responsible to a determination that the offeror is responsible; or
 - (b) a determination that a proposal is not responsive to a determination that the proposal is responsive.
- (5)
 - (a) This Subsection (5) applies if a request for best and final offers is issued because all cost proposals exceed the identified budget or the procurement unit's available funding.
 - (b)
 - (i) The conducting procurement unit may, in the request for best and final offers:
 - (A) specify the scope of work reductions the procurement unit is making in order to generate proposals that are within the identified budget or the procurement unit's available funding;
or
 - (B) invite offerors submitting best and final offers to specify the scope of work reductions being made so that the reduced cost proposal is within the identified budget or the procurement unit's available funding.
 - (ii) The conducting procurement unit is not required to accept a scope of work reduction that an offeror has specified in the offeror's best and final offer.
 - (c) A best and final offer submitted with a reduced cost proposal shall include an itemized list identifying specific reductions in the offeror's proposed scope of work that correspond to the offeror's reduced cost proposal.
 - (d) A reduction in the scope of work may not:
 - (i) eliminate a component identified in the request for proposals as a minimum mandatory requirement; or
 - (ii) alter the nature of the original request for proposals to the extent that a request for proposals for the reduced scope of work would have likely attracted a significantly different set of offerors submitting proposals in response to the request for proposals.
- (6) If a request for best and final offers is issued because two or more proposals received an identical evaluation score that is the highest score:

- (a) the request may be issued only to offerors who submitted a proposal receiving the highest score; and
- (b) an offeror submitting a best and final offer may revise:
 - (i) the technical aspects of the offeror's proposal;
 - (ii) the offeror's cost proposal, as provided in Subsection (5); or
 - (iii) both the technical aspects of the offeror's proposal and, as provided in Subsection (5), the offeror's cost proposal.
- (7) In a request for best and final offers, the conducting procurement unit shall:
 - (a) clearly specify:
 - (i) the issues that the procurement unit requests the offerors to address in their best and final offers; and
 - (ii) how best and final offers will be evaluated and scored in accordance with Section 63G-6a-707.5;
 - (b) establish a deadline for an offeror to submit a best and final offer; and
 - (c) if applicable, establish a schedule and procedure for conducting discussions with offerors concerning the best and final offers.
- (8) In conducting a best and final offer process under this section, a conducting procurement unit shall:
 - (a) maintain confidential the information the procurement unit receives from an offeror, including any cost information, until a contract has been awarded or the request for proposals canceled;
 - (b) ensure that each offeror receives fair and equal treatment; and
 - (c) safeguard the integrity of the scope of the original request for proposals, except as specifically provided otherwise in this section.
- (9) In a best and final offer, an offeror:
 - (a) may address only the issues described in the request for best and final offers; and
 - (b) may not correct a material error or deficiency in the offeror's proposal or address any issue not described in the request for best and final offers.
- (10) If an offeror fails to submit a best and final offer, the conducting procurement unit shall treat the offeror's original proposal as the offeror's best and final offer.
- (11) After the deadline for submitting best and final offers has passed, the evaluation committee shall evaluate the best and final offers submitted using the criteria described in the request for proposals.
- (12) An offeror may not make and a conducting procurement unit may not consider a best and final offer that the conducting procurement unit has not requested under this section.
- (13) To implement the best and final offer process described in this section, a rulemaking authority may make rules consistent with this section and the other provisions of this chapter.

Amended by Chapter 257, 2020 General Session

63G-6a-712 Unsolicited proposals.

- (1) As used in this section, "unsolicited proposal" means a written proposal:
 - (a) for a public-private partnership for:
 - (i) an infrastructure project; or
 - (ii) a project to collect, analyze, and distribute health data to improve health and health care and to facilitate interaction regarding health and health care issues; and
 - (b) that is not submitted in response to a solicitation.
- (2)

- (a) Subject to Subsection (2)(b), a person may submit an unsolicited proposal to a procurement unit at any time.
- (b) An unsolicited proposal may not be used to seek a procurement unit's consideration of a proposal after the expiration of the time for submitting proposals in response to a request for proposals.
- (3) An unsolicited proposal shall include:
 - (a) a reference to this section and a statement that the unsolicited proposal is submitted under this section;
 - (b) a conceptual description of the project that constitutes the procurement item that is the subject of the proposed public-private partnership;
 - (c) a description of the economic benefit of the project to the state and the procurement unit;
 - (d) information concerning the services or facilities currently being provided by the state or procurement unit that are similar to the project;
 - (e) an estimate of the project costs for:
 - (i) design;
 - (ii) implementation;
 - (iii) operation and maintenance; and
 - (iv) any other related project cost; and
 - (f) the name, address, telephone number, and email address of an individual who may be contacted for further information concerning the unsolicited proposal.
- (4) A procurement unit is not required to consider an unsolicited proposal.
- (5) A procurement unit may charge a person submitting an unsolicited proposal a fee to cover the actual cost of processing, considering, and evaluating the unsolicited proposal.
- (6) A procurement unit that receives an unsolicited proposal may not award a contract for the procurement item described in the unsolicited proposal unless:
 - (a) the procurement unit first engages in a standard procurement process for proposals to provide the procurement item described in the unsolicited proposal; or
 - (b) awarding the contract without the procurement unit engaging in a standard procurement process is allowed under Section 63G-6a-802.
- (7) If a procurement unit engages in a standard procurement process pursuant to Subsection (6)
 - (a):
 - (a) the procurement unit shall treat an unsolicited proposal as though it were submitted as a proposal in response to the solicitation; and
 - (b) a person who has submitted an unsolicited proposal may, within the time provided in the solicitation for the submission of proposals, modify the unsolicited proposal to the extent necessary to address matters raised in the solicitation that were not addressed in the initial unsolicited proposal.
- (8) A rulemaking authority may make rules to govern the submission, processing, consideration, and evaluation of an unsolicited proposal, including fees relating to the unsolicited proposal.
- (9) An unsolicited proposal is subject to Chapter 2, Government Records Access and Management Act, including, if applicable, provisions relating to a written claim of business confidentiality, as provided in Section 63G-2-309, for trade secrets, commercial information, or nonindividual financial information described in Subsection 63G-2-305(1) or (2).

Amended by Chapter 257, 2020 General Session
Amended by Chapter 354, 2020 General Session

Part 8 Exceptions to Procurement Requirements

63G-6a-801 Title.

This part is known as "Exceptions to Procurement Requirements."

Enacted by Chapter 347, 2012 General Session

63G-6a-802 Award of contract without engaging in a standard procurement process -- Notice -- Duty to negotiate contract terms in best interest of procurement unit.

- (1) A procurement unit may award a contract for a procurement item without engaging in a standard procurement process if the procurement official determines in writing that:
 - (a) there is only one source for the procurement item;
 - (b)
 - (i) transitional costs are a significant consideration in selecting a procurement item; and
 - (ii) the results of a cost-benefit analysis demonstrate that transitional costs are unreasonable or cost-prohibitive, and that the award of a contract without engaging in a standard procurement process is in the best interest of the procurement unit;
 - (c) the award of a contract is under circumstances, described in rules adopted by the rulemaking authority, that make awarding the contract through a standard procurement process impractical and not in the best interest of the procurement unit;
 - (d) the procurement item is intended to be used for, or in connection with the establishment of, a state store, as defined in Section 32B-1-102; or
 - (e) the procurement item is intended to be used to host a debate of candidates for president of the United States held at a state institution of higher education.
- (2) Transitional costs associated with a trial use or testing of a procurement item under a trial use contract awarded under Section 63G-6a-802.3 may not be included in a consideration of transitional costs under Subsection (1)(b).
- (3)
 - (a) Subject to Subsection (3)(b), a rulemaking authority shall make rules regarding the publication of notice for a procurement under this section that, at a minimum, require publication of notice of the procurement, in accordance with Section 63G-6a-112, if the cost of the procurement exceeds \$50,000.
 - (b) Publication of notice under Section 63G-6a-112 is not required for:
 - (i) the procurement of public utility services pursuant to a sole source contract;
 - (ii) other procurements under this section for which an applicable rule provides that notice is not required; or
 - (iii) a procurement under Subsection (1)(e).
- (4) A procurement official who awards a contract under this section shall negotiate with the contractor to ensure that the terms of the contract, including price and delivery, are in the best interest of the procurement unit.

63G-6a-802.3 Trial use contracts.

- (1) A procurement unit may award a trial use contract without engaging in a standard procurement process if:
 - (a) the purpose of the contract is to:

- (i) determine whether the procurement item will benefit the procurement unit;
 - (ii) assess the feasibility of a procurement item that:
 - (A) is new or innovative; or
 - (B) has a proposed use or application that is novel or unproven; or
 - (iii) evaluate whether to conduct a standard procurement process for the procurement item being tested; and
- (b) the contract is:
- (i) awarded for a procurement item that is not already available to the procurement unit under an existing contract;
 - (ii) restricted to the procurement of a procurement item in the minimum quantity and for the minimum period of time necessary to test the procurement item;
 - (iii) the only trial use contract for that procurement unit for the same procurement item; and
 - (iv) not used to circumvent the purposes and policies of this chapter as set forth in Section 63G-6a-102.
- (2) The period of trial use or testing of a procurement item under a trial use contract may not exceed 24 months, unless the procurement official provides a written exception documenting the reason for a longer period.
- (3) A trial use contract shall:
- (a) state that the contract is strictly for the trial use or testing of a procurement item;
 - (b) state that the contract terminates upon completion of the trial use or testing period;
 - (c) state that the procurement unit is not obligated to purchase or enter into a contract for the procurement item, regardless of the trial use or testing result;
 - (d) state that any purchase of the procurement item that is the subject of the trial use contract will be made in accordance with this chapter; and
 - (e) include, as applicable:
 - (i) test schedules;
 - (ii) deadlines and a termination date;
 - (iii) measures that will be used to evaluate the performance of the procurement item;
 - (iv) any fees and associated expenses or an explanation of the circumstances warranting a waiver of those fees and expenses;
 - (v) the obligations of the procurement unit and vendor;
 - (vi) provisions regarding the ownership of the procurement item during and after the trial use or testing period;
 - (vii) an explanation of the grounds upon which the contract may be terminated;
 - (viii) a provision relating to any required bond or security deposit; and
 - (ix) other requirements unique to the procurement item for trial use or testing.
- (4) Publication of notice under Section 63G-6a-112 is not required for a trial use contract.
- (5) A rulemaking authority may make rules pertaining to a trial use contract.

Amended by Chapter 257, 2020 General Session

63G-6a-802.7 Extension of a contract without engaging in a standard procurement process.

A procurement official may extend an existing contract without engaging in a standard procurement process:

- (1) for a period of time not to exceed 120 days, if:
 - (a) an extension of the contract is necessary to:
 - (i) avoid a lapse in a critical government service; or

- (ii) to mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare, or property; and
- (b)
 - (i)
 - (A) the procurement unit is engaged in a standard procurement process for a procurement item that is the subject of the contract being extended; and
 - (B) the standard procurement process is delayed due to an unintentional error;
 - (ii) a change in an industry standard requires one or more significant changes to specifications for the procurement item; or
 - (iii) an extension is necessary:
 - (A) to prevent the loss of federal funds;
 - (B) to mitigate the effects of a delay of a state or federal appropriation;
 - (C) to enable the procurement unit to continue to receive a procurement item during a delay in the implementation of a contract awarded pursuant to a procurement that has already been conducted; or
 - (D) to enable the procurement unit to continue to receive a procurement item during a period of time during which negotiations with a vendor under a new contract for the procurement item are being conducted;
- (2) for the period of a protest, appeal, or court action, if the protest, appeal, or court action is the reason for delaying the award of a new contract; or
- (3) for a period of time exceeding 120 days, if, after consulting with the attorney general or the procurement unit's attorney, the procurement official determines in writing that the contract extension does not violate state or federal antitrust laws and is consistent with the purpose of ensuring the fair and equitable treatment of all persons who deal with the procurement system.

Amended by Chapter 257, 2020 General Session

63G-6a-803 Emergency procurement.

- (1) As used in this section, "natural disaster" means an event where:
 - (a) one or more of the following has caused widespread damage:
 - (i) an explosion;
 - (ii) fire;
 - (iii) a flood;
 - (iv) a storm;
 - (v) a tornado;
 - (vi) winds;
 - (vii) an earthquake;
 - (viii) lightning; or
 - (ix) other adverse weather event; and
 - (b) the president of the United States has declared an emergency or major disaster in the state, or the governor has declared a state of emergency under Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act.
- (2) Notwithstanding any other provision of this chapter and subject to Subsection (4), a procurement official may authorize a procurement unit to engage in an emergency procurement without using a standard procurement process if the procurement is necessary to:
 - (a) avoid a lapse in a critical government service;
 - (b) mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare, or property, including a natural disaster; or

- (c) protect the legal interests of a public entity.
- (3) A procurement unit conducting an emergency procurement under Subsection (2) shall:
 - (a) ensure that the procurement is made with as much competition as reasonably practicable while:
 - (i) avoiding a lapse in a critical government service;
 - (ii) avoiding harm, or a risk of harm, to the public health, safety, welfare, or property; or
 - (iii) protecting the legal interests of a public entity; and
 - (b) make the following publicly available on the procurement unit's website within 14 days of the emergency procurement:
 - (i) a written document describing the specific emergency that necessitated the emergency procurement;
 - (ii) the name of the highest ranking government official that approved the emergency procurement; and
 - (iii) each written contract related to the emergency procurement.
- (4)
 - (a) Except as provided in Subsections (4)(b), (5), and (6), the term of a contract entered into for an emergency procurement under this section may be no longer than 30 days.
 - (b) The term of a contract entered into for an emergency procurement under this section related to a natural disaster may be no longer than 60 days.
- (5)
 - (a) Subject to Subsection (5)(b), the requirements described in Subsection (4) do not apply to an emergency procurement for legal services.
 - (b) A person hired through an emergency procurement to provide legal services may not, under the contract entered into through the emergency procurement, hire or otherwise provide remuneration to a consultant for services related to any topic that is not directly related to the legal services for which the person was hired.
- (6) The requirements described in Subsection (4) do not apply to an emergency procurement by the Department of Human Services related to the:
 - (a) placement of a client with a residential service provider; or
 - (b) provision of medical services for a client.

Amended by Chapter 30, 2021 General Session

63G-6a-804 Purchase of prison industry goods.

- (1) As used in this section:
 - (a) "Applicable procurement unit" means a procurement unit that is not:
 - (i) a political subdivision of the state;
 - (ii) the Utah Schools for the Deaf and the Blind; or
 - (iii) the Utah Office of Tourism.
 - (b) "Correctional industries division" means the Division of Correctional Industries, created in Section 64-13a-4.
 - (c) "Correctional industries director" means the director of the correctional industries division, appointed under Section 64-13a-4.
- (2)
 - (a) An applicable procurement unit shall purchase goods and services produced by the correctional industries division as provided in this section.
 - (b) A procurement unit that is not an applicable procurement unit may, and is encouraged to, purchase goods and services under this section.

- (c) A procurement unit is not required to use a standard procurement process to purchase goods or services under this section.
- (3) On or before July 1 of each year, the correctional industries director shall:
 - (a) publish and distribute to all procurement units and other interested public entities a catalog of goods and services produced by the correctional industries division, including a description and price of each item offered for sale; and
 - (b) update and revise the catalog described in Subsection (3)(a) during the year as the correctional industries director considers necessary.
- (4)
 - (a) An applicable procurement unit may not purchase any goods or services provided by the correctional industries division from any other source unless the correctional industries director and the procurement official or, in the case of institutions of higher education, the institutional procurement officer, determine in writing that purchase from the correctional industries division is not feasible due to one of the following circumstances:
 - (i) the good or service offered by the correctional industries division does not meet the reasonable requirements of the procurement unit;
 - (ii) the good or service cannot be supplied within a reasonable time by the correctional industries division; or
 - (iii) the cost of the good or service, including basic price, transportation costs, and other expenses of acquisition, is not competitive with the cost of procuring the item from another source.
 - (b) In cases of disagreement under Subsection (4)(a):
 - (i) the decision may be appealed to a board consisting of:
 - (A) the director of the Department of Corrections;
 - (B) the director of Administrative Services; and
 - (C) a neutral third party agreed upon by the other two members of the board;
 - (ii) in the case of an institution of higher education of the state, the president of the institution, or the president's designee, shall make the final decision; or
 - (iii) in the case of any of the following entities, a person designated by the rulemaking authority shall make the final decision:
 - (A) a legislative procurement unit;
 - (B) a judicial procurement unit; or
 - (C) a public transit district.

Amended by Chapter 159, 2024 General Session

63G-6a-805 Purchase from community rehabilitation programs.

- (1) As used in this section:
 - (a) "Advisory board" means the Purchasing from Persons with Disabilities Advisory Board created under this section.
 - (b) "Central not-for-profit association" means a group of experts designated by the advisory board to do the following, under guidelines established by the advisory board:
 - (i) assist the advisory board with its functions; and
 - (ii) facilitate the implementation of advisory board policies.
 - (c)
 - (i) "Community rehabilitation program" means a program that is operated primarily for the purpose of the employment and training of persons with a disability by a government agency

or qualified nonprofit organization which is an income tax exempt organization under 26 U.S.C. Sec. 501(c)(3) of the Internal Revenue Code.

- (ii) A community rehabilitation program:
 - (A) maintains an employment ratio of at least 75% of the program employees under the procurement contract in question have severe disabilities;
 - (B)
 - (I) complies with any applicable occupational health and safety standards prescribed by the United States Department of Labor; or
 - (II) is a supported employment program approved by the Utah State Office of Rehabilitation created in Section 35A-1-202;
 - (C) has its principal place of business in Utah;
 - (D) produces any good provided under this section in Utah; and
 - (E) provides any service that is provided by individuals with a majority of whom domiciled in Utah.
- (d) "Person with a disability" means a person with any disability as defined by and covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.
- (2) There is created within the division the Purchasing from Persons with Disabilities Advisory Board.
- (3) The advisory board shall consist of three members, as follows:
 - (a) the director of the division or the director's designee;
 - (b) the director of the Utah State Office of Rehabilitation or the director's designee; and
 - (c) a representative of the private business community who shall be appointed to a three-year term by the governor with the advice and consent of the Senate.
- (4) The advisory board shall meet, as needed, to facilitate the procurement of goods and services from community rehabilitation programs by a procurement unit under this chapter by:
 - (a) identifying goods and services that are available from community rehabilitation programs in accordance with the requirements of Subsection (7);
 - (b) approving prices in accordance with Subsection (7)(c) for goods and services that are identified under Subsection (4)(a);
 - (c) developing, maintaining, and approving a preferred procurement contract list of goods and services identified and priced under Subsections (4)(a) and (b);
 - (d) reviewing bids received by a community rehabilitation program; and
 - (e) awarding and renewing specified contracts for set contract times, without competitive bidding, for the purchase of goods and services under Subsection (7).
- (5) The provisions of Subsections (4) and (7)(a) are an exception to the procurement provisions under this chapter.
- (6)
 - (a) The advisory board may designate a central not-for-profit association, appoint its members, and establish guidelines for its duties.
 - (b) The designated central not-for-profit association serves at the pleasure of the advisory board. The central not-for-profit association or its individual members may be removed by the advisory board at any time by a majority vote of the advisory board.
 - (c) Subject to the advisory board guidelines and discretion, a designated central not-for-profit association may be assigned to perform the following duties:
 - (i) identify qualified community rehabilitation programs and the goods and services that they provide or have the potential to provide;
 - (ii) help ensure that goods and services are provided at reasonable quality and delivery levels;
 - (iii) recommend pricing for goods and services;

- (iv) review bids and recommend the award of contracts under the advisory board's direction;
 - (v) collect and report program data to the advisory board and to the division; and
 - (vi) other duties specified by the advisory board.
- (7) Except as provided under Subsection (9), notwithstanding any provision of this chapter to the contrary, each procurement unit shall purchase goods and services produced by a community rehabilitation program using the preferred procurement contract list approved under Subsection (4)(c) if:
- (a) the good or service offered for sale by a community rehabilitation program reasonably conforms to the needs and specifications of the procurement unit;
 - (b) the community rehabilitation program can supply the good or service within a reasonable time; and
 - (c) the price of the good or service is reasonably competitive with the cost of procuring the good or service from another source.
- (8) Each community rehabilitation program:
- (a) may submit a bid to the advisory board at any time and not necessarily in response to an invitation for bids; and
 - (b) shall certify on any bid it submits to the advisory board or to a procurement unit under this section that it is claiming a preference under this section.
- (9) During a fiscal year, the requirement for a procurement unit to purchase goods and services produced by a community rehabilitation program under the preferred procurement list under Subsection (7) does not apply if the division determines that the total amount of procurement contracts with community rehabilitation programs has reached \$5 million for that fiscal year.
- (10) In the case of conflict between a purchase under this section and a purchase under Section 63G-6a-804, this section prevails.

Amended by Chapter 271, 2016 General Session

63G-6a-806 Exception for public transit district contracting with a county or municipality.

A public transit district, organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act, may, without going through a standard procurement process or another exception to a standard procurement process described in this part:

- (1) contract with a county or municipality to receive money from the county or municipality; and
- (2) use the money described in Subsection (1) to fund a transportation project or a transit-related program in accordance with rules made by the rulemaking authority.

Amended by Chapter 257, 2020 General Session

Part 9 Cancellations, Rejections, and Debarment

63G-6a-901 Title.

This part is known as "Cancellations, Rejections, and Debarment."

Enacted by Chapter 347, 2012 General Session

63G-6a-902 Cancellation and rejection of bids and proposals.

- (1) An issuing procurement unit may cancel an invitation for bids, a request for proposals, or other solicitation or reject any or all bids or proposal responses, in whole or in part, as may be specified in the solicitation, when it is in the best interests of the procurement unit in accordance with the rules of the rulemaking authority.
- (2) The reasons for a cancellation or rejection described in Subsection (1) shall be made part of the contract file.

Amended by Chapter 257, 2020 General Session

63G-6a-903 Determination of nonresponsibility.

- (1) A determination of nonresponsibility of a person made by an issuing procurement unit shall be made in writing, in accordance with the rules of the rulemaking authority.
- (2) A person's unreasonable failure to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to the person.
- (3) Subject to Title 63G, Chapter 2, Government Records Access and Management Act, information furnished by a person pursuant to this section may not be disclosed outside of a procurement unit without the person's prior written consent.

Amended by Chapter 257, 2020 General Session

63G-6a-904 Debarment or suspension from consideration for award of contracts -- Process -- Causes for debarment -- Judicial review.

- (1)
 - (a) Subject to Subsection (1)(b), a procurement official may:
 - (i) debar a person for cause from consideration for award of contracts for a period not to exceed three years; or
 - (ii) suspend a person from consideration for award of contracts if there is cause to believe that the person has engaged in any activity that might lead to debarment.
 - (b) Before debarring or suspending a person under Subsection (1)(a), a procurement official shall:
 - (i) consult with:
 - (A) the procurement unit involved in the matter for which debarment or suspension is sought; and
 - (B) the attorney general, if the procurement unit is in the state executive branch, or the procurement unit's attorney, if the procurement unit is not in the state executive branch;
 - (ii) give the person at least 10 days' prior written notice of:
 - (A) the reasons for which debarment or suspension is being considered; and
 - (B) the hearing under Subsection (1)(b)(iii); and
 - (iii) hold an informal hearing in accordance with Subsection (1)(c).
 - (c)
 - (i) At an informal hearing under Subsection (1)(b)(iii), a procurement official may:
 - (A) subpoena witnesses and compel their attendance at the hearing;
 - (B) subpoena documents for production at the hearing;
 - (C) obtain additional factual information; and
 - (D) obtain testimony from experts, the person who is the subject of the proposed debarment or suspension, representatives of the procurement unit, or others to assist the procurement official to make a decision on the proposed debarment or suspension.

- (ii) The Rules of Evidence do not apply to an informal hearing under Subsection (1)(b)(iii).
 - (iii) A procurement official shall:
 - (A) record a hearing under Subsection (1)(b)(iii); and
 - (B) preserve all records and other evidence relied upon in reaching a decision until the decision becomes final.
 - (iv) The holding of an informal hearing under Subsection (1)(b)(iii) or the issuing of a decision under Subsection (1)(c)(v) does not affect a person's right to later question or challenge the jurisdiction of the procurement official to hold a hearing or issue a decision.
 - (v) A procurement official shall:
 - (A) promptly issue a written decision regarding a proposed debarment or suspension, unless the matter is settled by mutual agreement; and
 - (B) mail, email, or otherwise immediately furnish a copy of the decision to the person who is the subject of the decision.
 - (vi) A written decision under Subsection (1)(c)(v) shall:
 - (A) state the reasons for the debarment or suspension, if debarment or suspension is ordered; and
 - (B) inform the person who is debarred or suspended of the right to judicial review as provided in this chapter.
 - (vii) A decision of debarment or suspension is final and conclusive unless the decision is overturned by a court under Subsection (4).
- (2) A suspension under this section may not be for a period exceeding three months, unless an indictment has been issued for an offense which would be a cause for debarment under Subsection (3), in which case the suspension shall, at the request of the attorney general, if the procurement unit is in the state executive branch, or the procurement unit's attorney, if the procurement unit is not in the state executive branch, remain in effect until after the trial of the suspended person.
- (3) The causes for debarment include the following:
- (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of a public or private contract or subcontract;
 - (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor for the procurement unit;
 - (c) conviction under state or federal antitrust statutes;
 - (d) failure without good cause to perform in accordance with the terms of the contract;
 - (e) a violation of this chapter; or
 - (f) any other cause that the procurement official determines to be so serious and compelling as to affect responsibility as a contractor for the procurement unit, including debarment by another governmental entity.
- (4)
- (a) A person who is debarred or suspended under this section may seek judicial review of the debarment or suspension by filing a petition for judicial review in district court.
 - (b) A petition under Subsection (4)(a):
 - (i) is a complaint governed by the Utah Rules of Civil Procedure;
 - (ii) shall name the procurement unit as respondent;
 - (iii) shall be accompanied by a copy of the written decision as to which judicial review is sought; and

- (iv) is barred unless filed in district court within 30 days after the date of the issuance of the written decision of suspension or debarment under Subsection (1)(c)(v).
- (c) A district court's review of a petition under Subsection (4)(a) shall be de novo.
- (d) A district court shall, without a jury, determine all questions of fact and law, including any constitutional issue, presented in the pleadings.
- (5) A procurement unit may consider a cause for debarment under Subsection (3) as the basis for determining that a person responding to a solicitation is not responsible:
 - (a) independent of any effort or proceeding under this section to debar or suspend the person; and
 - (b) even if the procurement unit does not choose to seek debarment or suspension.
- (6) A rulemaking authority may make rules pertaining to the suspension and debarment process under this section, including rules governing an informal hearing under Subsection (1)(b)(iii).

Amended by Chapter 257, 2020 General Session

63G-6a-905 Quote, bid, offer, or contract prohibited by person with outstanding tax lien -- Exceptions -- Rejection of quote, bid, or offer.

- (1) Except as provided in Subsection (2), a person with an outstanding tax lien in the state may not:
 - (a) submit a quote, bid, or offer to a procurement unit; or
 - (b) contract to provide a procurement item to a procurement unit.
- (2) Subsection (1) does not apply to the extent that a procurement officer determines it is in the public interest to grant an exception to the requirements of Subsection (1) for a particular quote, bid, offer, or contract specified by the procurement officer.
- (3) A procurement unit may reject a quote, bid, or offer submitted in violation of Subsection (1).

Enacted by Chapter 445, 2013 General Session

**Part 10
Preferences**

63G-6a-1001 Title.

This part is known as "Preferences."

Enacted by Chapter 347, 2012 General Session

63G-6a-1002 Reciprocal preference for providers of state products.

- (1)
 - (a) An issuing procurement unit shall, for all procurements, give a reciprocal preference to those bidders offering procurement items that are produced, manufactured, mined, grown, or performed in Utah over those bidders offering procurement items that are produced, manufactured, mined, grown, or performed in any state that gives or requires a preference to procurement items that are produced, manufactured, mined, grown, or performed in that state.
 - (b) The amount of reciprocal preference shall be equal to the amount of the preference applied by the other state for that particular procurement item.

- (c) In order to receive a reciprocal preference under this section, the bidder shall certify on the bid that the procurement items offered are produced, manufactured, mined, grown, or performed in Utah.
 - (d) The reciprocal preference is waived if the certification described in Subsection (1)(c) does not appear on the bid.
- (2)
- (a) If the responsible bidder submitting the lowest responsive bid offers procurement items that are produced, manufactured, mined, grown, or performed in a state that gives or requires a preference, and if another responsible bidder has submitted a responsive bid offering procurement items that are produced, manufactured, mined, grown, or performed in Utah, and with the benefit of the reciprocal preference, the bid of the other bidder is equal to or less than the original lowest bid, the issuing procurement unit shall:
 - (i) give notice to the bidder offering procurement items that are produced, manufactured, mined, grown, or performed in Utah that the bidder qualifies as a preferred bidder; and
 - (ii) make the purchase from the preferred bidder if the bidder agrees, in writing, to meet the low bid within 72 hours after notification that the bidder is a preferred bidder.
 - (b) The issuing procurement unit shall include the exact price submitted by the lowest bidder in the notice the issuing procurement unit submits to the preferred bidder.
 - (c) The issuing procurement unit may not enter into a contract with any other bidder for the purchase until 72 hours have elapsed after notification to the preferred bidder.
- (3)
- (a) If there is more than one preferred bidder, the issuing procurement unit shall award the contract to the willing preferred bidder who was the lowest preferred bidder originally.
 - (b) If there were two or more equally low preferred bidders, the issuing procurement unit shall comply with the rules of the rulemaking authority to determine which bidder should be awarded the contract.
- (4) The provisions of this section do not apply if application of this section might jeopardize the receipt of federal funds.

Amended by Chapter 257, 2020 General Session

63G-6a-1003 Preference for resident contractors.

- (1) As used in this section, "resident contractor" means a person, partnership, corporation, or other business entity that:
- (a) either has its principal place of business in Utah or that employs workers who are residents of this state when available; and
 - (b) was transacting business on the date when bids for the public contract were first solicited.
- (2)
- (a) When awarding contracts for construction, an issuing procurement unit shall grant a resident contractor a reciprocal preference over a nonresident contractor from any state that gives or requires a preference to contractors from that state.
 - (b) The amount of the reciprocal preference shall be equal to the amount of the preference applied by the state of the nonresident contractor.
- (3)
- (a) In order to receive the reciprocal preference under this section, the bidder shall certify on the bid that the bidder qualifies as a resident contractor.
 - (b) The reciprocal preference is waived if the certification described in Subsection (2)(a) does not appear on the bid.

- (4)
- (a) If the responsible contractor submitting the lowest responsive bid is not a resident contractor whose principal place of business is in a state that gives or requires a preference to contractors from that state, and if a resident responsible contractor has also submitted a responsive bid, and, with the benefit of the reciprocal preference, the resident contractor's bid is equal to or less than the original lowest bid, the issuing procurement unit shall:
 - (i) give notice to the resident contractor that the resident contractor qualifies as a preferred resident contractor; and
 - (ii) issue the contract to the resident contractor if the resident contractor agrees, in writing, to meet the low bid within 72 hours after notification that the resident contractor is a preferred resident contractor.
 - (b) The issuing procurement unit shall include the exact price submitted by the lowest bidder in the notice that the issuing procurement unit submits to the preferred resident contractor.
 - (c) The issuing procurement unit may not enter into a contract with any other bidder for the construction until 72 hours have elapsed after notification to the preferred resident contractor.
- (5)
- (a) If there is more than one preferred resident contractor, the issuing procurement unit shall award the contract to the willing preferred resident contractor who was the lowest preferred resident contractor originally.
 - (b) If there were two or more equally low preferred resident contractors, the issuing procurement unit shall comply with the rules of the rulemaking authority to determine which bidder should be awarded the contract.
- (6) The provisions of this section do not apply if application of this section might jeopardize the receipt of federal funds.

Amended by Chapter 257, 2020 General Session

63G-6a-1004 Exception for federally funded contracts.

This part does not apply to the extent it conflicts with federal requirements relating to a procurement that involves the expenditure of federal assistance, federal contract funds, or federal financial participation funds.

Enacted by Chapter 347, 2012 General Session

**Part 11
Bonds**

63G-6a-1101 Title.

This part is known as "Bonds."

Enacted by Chapter 347, 2012 General Session

63G-6a-1102 Bid security requirements -- Directed suretyship prohibited -- Penalty.

- (1) Bid security in an amount equal to at least 5% of the amount of the bid shall be required for all competitive bidding for construction contracts. Bid security shall be a bond provided by a

surety company authorized to do business in this state, the equivalent in cash, or any other form satisfactory to the state.

- (2) When a bidder fails to comply with the requirement for bid security described in the invitation for bids, the bid shall be rejected unless, pursuant to rules of the rulemaking authority, the issuing procurement unit determines that the failure to comply with the security requirements is nonsubstantial.
- (3) After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids. If a bidder is permitted to withdraw a bid before award, no action shall be taken against the bidder or the bid security.
- (4)
 - (a) When issuing an invitation for a bid under this chapter, the procurement official responsible for carrying out a construction project may not require a person or entity who is bidding for a contract to obtain a bond of the type described in Subsection (1) from a specific insurance or surety company, producer, agent, or broker.
 - (b) A person who violates Subsection (4)(a) is guilty of an infraction.

Amended by Chapter 257, 2020 General Session

63G-6a-1103 Bonds or security necessary when contract is awarded -- Waiver -- Action -- Attorney fees.

- (1) When a construction contract is awarded under this chapter, the contractor to whom the contract is awarded shall deliver the following bonds or security to the procurement unit, which shall become binding on the parties upon the execution of the contract:
 - (a) a performance bond satisfactory to the procurement unit that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in the state or any other form satisfactory to the procurement unit; and
 - (b) a payment bond satisfactory to the procurement unit that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in the state or any other form satisfactory to the procurement unit, which is for the protection of each person supplying labor, service, equipment, or material for the performance of the work provided for in the contract.
- (2)
 - (a) When a construction contract is awarded under this chapter, the procurement official responsible for carrying out the construction project may not require a contractor to whom a contract is awarded to obtain a bond of the types referred to in Subsection (1) from a specific insurance or surety company, producer, agent, or broker.
 - (b) A person who violates Subsection (2)(a) is guilty of an infraction.
- (3) Rules of a rulemaking authority may provide for waiver of the requirement of a bid, performance, or payment bond for circumstances in which the procurement official considers any or all of the bonds to be unnecessary to protect the procurement unit.
- (4) A person has a right of action on a payment bond under this section for any unpaid amount due to the person if:
 - (a) the person has furnished labor, service, equipment, or material for the work provided for in the contract for which the payment bond is furnished under this section; and
 - (b) the person has not been paid in full within 90 days after the last day on which the person performed the labor or service or supplied the equipment or material for which the claim is made.

- (5) An action upon a payment bond may only be brought in a court of competent jurisdiction in a county where the construction contract was to be performed. The action is barred if not commenced within one year after the last day on which the claimant performed the labor or service or supplied the equipment or material on which the claim is based. The obligee named in the bond need not be joined as a party to the action.
- (6) In any suit upon a payment bond, the court shall award reasonable attorney fees to the prevailing party, which fees shall be taxed as costs in the action.

Amended by Chapter 257, 2020 General Session

63G-6a-1104 Preliminary notice requirement.

- (1) Any person furnishing labor, service, equipment, or material for which a payment bond claim may be made under this chapter shall provide preliminary notice to the designated agent as prescribed by Section 38-1b-202, except that this section does not apply:
 - (a) to an individual performing labor for wages; or
 - (b) if a notice of commencement is not filed as prescribed in Section 38-1b-201 for the project or improvement for which labor, service, equipment, or material is furnished.
- (2) Any person who fails to provide the preliminary notice required by Subsection (1) may not make a payment bond claim under this chapter.
- (3) The preliminary notice required by Subsection (1) must be provided before commencement of any action on the payment bond.
- (4) Subsection (1)(a) does not exempt the following from complying with the requirements of this section:
 - (a) a temporary labor service company or organization;
 - (b) a professional employer company or organization; or
 - (c) any other entity that provides labor.

Amended by Chapter 278, 2012 General Session

Amended by Chapter 330, 2012 General Session

Renumbered and Amended by Chapter 347, 2012 General Session

63G-6a-1105 Form of bonds -- Effect of certified copy.

- (1) The form of the bonds required by this part shall be established by rule made by the rulemaking authority.
- (2) Any person may obtain from the procurement unit a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any.
- (3) A certified copy of a bond is prima facie evidence of the contents, execution, and delivery of the original.

Amended by Chapter 257, 2020 General Session

Part 12
Contracts and Change Orders

63G-6a-1201 Title.

This part is known as "Contracts and Change Orders."

Enacted by Chapter 347, 2012 General Session

63G-6a-1202 Standard contract clauses encouraged.

A procurement unit is encouraged to establish standard contract clauses to assist the procurement unit and to help contractors and potential contractors to understand applicable requirements.

Repealed and Re-enacted by Chapter 196, 2014 General Session

63G-6a-1203 Certain indemnification provisions forbidden -- Exceptions.

- (1) A contract, including an amendment to an existing contract, entered into under this chapter may not require that a design professional indemnify another from liability claims that arise out of the design professional's services, unless the liability claim arises from the design professional's negligent act, wrongful act, error or omission, or other liability imposed by law.
- (2) Subsection (1) may not be waived by contract.
- (3) Notwithstanding Subsections (1) and (2), a design professional may be required to indemnify a person for whom the design professional has direct or indirect control or responsibility.

Amended by Chapter 218, 2015 General Session

63G-6a-1204 Multiyear contracts.

- (1) Except as provided in Subsection (7), a procurement unit may enter into a multiyear contract resulting from an invitation for bids or a request for proposals, if:
 - (a) the procurement official determines, in the discretion of the procurement official, that entering into a multiyear contract is in the best interest of the procurement unit; and
 - (b) the invitation for bids or request for proposals:
 - (i) states the term of the contract, including all possible renewals of the contract;
 - (ii) states the conditions for renewal of the contract; and
 - (iii) includes the provisions of Subsections (3) through (5) that are applicable to the contract.
- (2) In making the determination described in Subsection (1)(a), the procurement official shall consider whether entering into a multiyear contract will:
 - (a) result in significant savings to the procurement unit, including:
 - (i) reduction of the administrative burden in procuring, negotiating, or administering contracts;
 - (ii) continuity in operations of the procurement unit; or
 - (iii) the ability to obtain a volume or term discount;
 - (b) encourage participation by a person who might not otherwise be willing or able to compete for a shorter term contract; or
 - (c) provide an incentive for a bidder or offeror to improve productivity through capital investment or better technology.
- (3)
 - (a) The determination described in Subsection (1)(a) is discretionary and is not required to be in writing or otherwise recorded.
 - (b) Except as provided in Subsections (4) and (5), notwithstanding any provision of an invitation for bids, a request for proposals, or a contract to the contrary, a multiyear contract, including a contract that was awarded outside of an invitation for bids or request for proposals process, may not continue or be renewed for any year after the first year of the multiyear contract if adequate funds are not appropriated or otherwise available to continue or renew the contract.

- (4) A multiyear contract that is funded solely by federal funds may be continued or renewed for any year after the first year of the multiyear contract if:
 - (a) adequate funds to continue or renew the contract have not been, but are expected to be appropriated by, and received from, the federal government;
 - (b) continuation or renewal of the contract before the money is appropriated or received is permitted by the federal government; and
 - (c) the contract states that it may be cancelled or suspended, without penalty, if the anticipated federal funds are not appropriated or received.
- (5) A multiyear contract that is funded in part by federal funds may be continued or renewed for any year after the first year of the multiyear contract if:
 - (a) the portion of the contract that is to be funded by funds of a public entity are appropriated;
 - (b) adequate federal funds to continue or renew the contract have not been, but are expected to be, appropriated by, and received from, the federal government;
 - (c) continuation or renewal of the contract before the federal money is appropriated or received is permitted by the federal government; and
 - (d) the contract states that it may be cancelled or suspended, without penalty, if the anticipated federal funds are not appropriated or received.
- (6) A procurement unit may not continue or renew a multiyear contract after the end of the multiyear contract term or the renewal periods described in the contract, unless the procurement unit engages in a new standard procurement process or complies with an exception, described in this chapter, to using a standard procurement process.
- (7) A multiyear contract, including any renewal periods, may not exceed a period of five years, unless:
 - (a) the procurement official determines, in writing, that:
 - (i) a longer period is necessary in order to obtain the procurement item;
 - (ii) a longer period is customary for industry standards; or
 - (iii) a longer period is in the best interest of the procurement unit; and
 - (b) the written determination described in Subsection (7)(a) is included in the file relating to the procurement.
- (8) This section does not apply to a contract for the design or construction of a facility, a road, a public transit project, or a contract for the financing of equipment.

Amended by Chapter 64, 2021 General Session

63G-6a-1204.5 Multiple award contracts.

- (1)
 - (a) Through a standard procurement process, the division or an independent procurement unit may enter into multiple award contracts with multiple persons.
 - (b) The applicable rulemaking authority may make rules, consistent with this section, regulating the use of multiple award contracts.
- (2) Multiple award contracts may be in a procurement unit's best interest if award to two or more bidders or offerors for similar procurement items is needed or desired for adequate delivery, service, availability, or product compatibility.
- (3) A procurement unit that enters into multiple award contracts under this section shall:
 - (a) exercise care to protect and promote competition among bidders or offerors when seeking to enter into multiple award contracts;
 - (b) name all eligible users of the multiple award contracts in the invitation for bids or request for proposals; and

- (c) if the procurement unit anticipates entering into multiple award contracts before issuing the invitation for bids or request for proposals, state in the invitation for bids or request for proposals that the procurement unit may enter into multiple award contracts at the end of the procurement process.
- (4) A procurement unit that enters into multiple award contracts under this section shall:
 - (a) obtain, under the multiple award contracts, all of its normal, recurring requirements for the procurement items that are the subject of the contracts until the contracts terminate; and
 - (b) reserve the right to obtain the procurement items described in Subsection (4)(a) separately from the contracts if:
 - (i) there is a need to obtain a quantity of the procurement items that exceeds the amount specified in the contracts; or
 - (ii) the procurement officer makes a written finding that the procurement items available under the contract will not effectively or efficiently meet a nonrecurring special need of a procurement unit.
- (5) An applicable rulemaking authority may make rules to further regulate a procurement under this section.

Amended by Chapter 257, 2020 General Session

63G-6a-1205 Regulation of contract types -- Permitted and prohibited contract types.

- (1) Except as otherwise provided in this section, and subject to rules made under this section by the rulemaking authority, a procurement unit may use any type of contract that will promote the best interests of the procurement unit.
- (2) A rulemaking authority:
 - (a) may make rules governing, placing restrictions on, or prohibiting the use of any type of contract; and
 - (b) may not make rules that permit the use of a contract:
 - (i) that is prohibited under this section; or
 - (ii) in a manner that is prohibited under this section.
- (3) A procurement official may not use a type of contract, other than a firm fixed price contract, unless the procurement official makes a written determination that:
 - (a) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated;
 - (b) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles; and
 - (c) the use of a specified type of contract, other than a firm fixed price contract, is in the best interest of the procurement unit, taking into consideration the following criteria:
 - (i) the type and complexity of the procurement item;
 - (ii) the difficulty of estimating performance costs at the time the contract is entered into, due to factors that may include:
 - (A) the difficulty of determining definitive specifications;
 - (B) the difficulty of determining the risks, to the contractor, that are inherent in the nature of the work to be performed; or
 - (C) the difficulty to clearly determine other factors necessary to enter into an accurate firm fixed price contract;
 - (iii) the administrative costs to the procurement unit and the contractor;
 - (iv) the degree to which the procurement unit is required to provide technical coordination during performance of the contract;

- (v) the impact that the choice of contract type may have upon the level of competition for award of the contract;
 - (vi) the stability of material prices, commodity prices, and wage rates in the applicable market;
 - (vii) the impact of the contract type on the level of urgency related to obtaining the procurement item;
 - (viii) the impact of any applicable governmental regulation relating to the contract; and
 - (ix) other criteria that the procurement officer determines may relate to determining the contract type that is in the best interest of the procurement unit.
- (4) Contract types that, subject to the provisions of this section and rules made under this section, may be used by a procurement unit include the following:
- (a) a fixed price contract;
 - (b) a fixed price contract with price adjustment;
 - (c) a time and materials contract;
 - (d) a labor hour contract;
 - (e) a definite quantity contract;
 - (f) an indefinite quantity contract;
 - (g) a requirements contract;
 - (h) a contract based on a rate table in accordance with industry standards; or
 - (i) a contract that includes one of the following construction delivery methods:
 - (i) design-build;
 - (ii) design-bid-build; or
 - (iii) construction manager/general contractor.
- (5) Except as it applies to a change order, a procurement unit may not enter into a cost-plus-percentage-of-cost contract, unless:
- (a) use of a cost-plus-percentage-of-cost contract is approved by the procurement officer;
 - (b) it is standard practice in the industry to obtain the procurement item through a cost-plus-percentage-of-cost contract; and
 - (c) the percentage and the method of calculating costs in the contract are in accordance with industry standards.
- (6) A procurement unit may not enter into a cost-reimbursement contract, unless the procurement official makes a written determination that:
- (a)
 - (i) a cost-reimbursement contract is likely to cost less than any other type of permitted contract; or
 - (ii) it is impracticable to obtain the procurement item under any other type of permitted contract; and
 - (b) the proposed contractor's accounting system:
 - (i) will timely develop the cost data in the form necessary for the procurement unit to timely and accurately make payments under the contract; and
 - (ii) will allocate costs in accordance with generally accepted accounting principles.

Amended by Chapter 257, 2020 General Session

63G-6a-1206 Rules to determine allowable incurred costs -- Required information.

- (1)
 - (a) A rulemaking authority may, by rule, establish the cost principles to be included in a cost-reimbursement contract to determine incurred costs for the purpose of calculating a reimbursement.

- (b) The cost principles established by rule under Subsection (1)(a) may be modified, by contract, if the procurement official approves the modification.
- (2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a cost-based contract with a procurement unit shall:
 - (a) submit cost or pricing data relating to determining the cost or pricing amount; and
 - (b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing data submitted is accurate and complete as of the date specified by the procurement unit.
- (3) The procurement official shall ensure that the date specified under Subsection (2)(b) is before:
 - (a) the pricing of any contract awarded by a standard procurement process or pursuant to a sole source procurement, if the total contract price is expected to exceed an amount established by rule made by the rulemaking authority; or
 - (b) the pricing of any change order that is expected to exceed an amount established by rule made by the rulemaking authority.
- (4) A contract or change order that requires a certification described in Subsection (2) shall include a provision that the price to the procurement unit, including profit or fee, shall be adjusted to exclude any significant sums by which the procurement unit finds that the price was increased because the contractor provided cost or pricing data that was inaccurate, incomplete, or not current as of the date specified by the procurement officer.
- (5) A procurement unit is not required to comply with Subsection (2) if:
 - (a) the contract price is based on adequate price competition;
 - (b) the contract price is based on established catalogue prices or market prices;
 - (c) the contract price is set by law or rule; or
 - (d) the procurement states, in writing:
 - (i) that, in accordance with rules made by the rulemaking authority, the requirements of Subsection (2) may be waived; and
 - (ii) the reasons for the waiver.

Amended by Chapter 257, 2020 General Session

63G-6a-1206.3 Auditing of books of contractor or subcontractor.

- (1) A procurement officer or an audit entity under contract with the procurement unit may audit the books and records of a contractor or subcontractor.
- (2) An audit under Subsection (1):
 - (a) is limited to the books and records that relate to the applicable contract or subcontract; and
 - (b) may occur only at a reasonable time and place.
- (3) A contractor shall maintain all books and records relating to a contract for six years after the day on which the contractor receives the final payment under the contract, or until all audits initiated under this section within the six-year period have been completed, whichever is later.
- (4) A subcontractor shall maintain all books and records relating to a subcontract for six years after the day on which the subcontractor receives the final payment under the subcontract, or until all audits initiated under this section within the six-year period have been completed, whichever is later.

Enacted by Chapter 355, 2016 General Session

63G-6a-1206.5 Change in contract price.

- (1) As used in this section, "contract price":
 - (a) means the price under an existing contract between a procurement unit and a contractor; and

- (b) does not include a proposed price or cost contained in a solicitation response or any other bid, proposal, or offer submitted by a person other than the contractor under the existing contract.
- (2) A contractor may:
 - (a) increase the contract price only in accordance with the terms of the contract; and
 - (b) subject to Subsection (3), lower the contract price at any time during the time a contract is in effect.
- (3) A contractor under a multiple award contract resulting from a bidding process may not lower the contract price unless the contractor's solicitation response that led to the contract award was the lowest price solicitation response.

Amended by Chapter 406, 2021 General Session

63G-6a-1207 Certification of change order.

- (1) Under a construction contract, a change order that increases the contract amount may not be made without prior written certification that the change order is within the determined project or contract budget by:
 - (a) the fiscal officer of the entity responsible for funding the project or contract; or
 - (b) the official responsible for monitoring and reporting upon the status of the costs of the total project or contract budget.
- (2) If a change order will result in an increase in the total project or contract budget, the change order may not be made, unless:
 - (a) sufficient funds are added to the project contract or budget; or
 - (b) the scope of the project or contract is adjusted to permit the degree of completion feasible within the total project or contract budget as it existed before the change order under consideration.
- (3) Notwithstanding any other provision of this section, it shall be presumed that this section has been complied with if the contractor reasonably relies on an executed change order.

Renumbered and Amended by Chapter 347, 2012 General Session

63G-6a-1208 Installment payments -- Contract prepayments.

- (1) A contract entered into by a procurement unit may provide for installment payments, including interest charges, over a period of time, if the procurement official makes a written finding that:
 - (a) the use of installment payments are in the interest of the procurement unit;
 - (b) installment payments are not used as a method of avoiding budgetary constraints;
 - (c) the procurement unit has obtained all budgetary approvals and other approvals required for making the installment payments;
 - (d) all aspects of the installment payments required in the contract are in accordance with the requirements of law; and
 - (e) for a contract awarded through an invitation for bids or a request for proposals, the invitation for bids or request for proposals indicates that installment payments are required or permitted.
- (2)
 - (a) A procurement unit may not pay for a procurement item before the procurement unit receives the procurement item, unless the procurement official determines that it is necessary or beneficial for the procurement unit to pay for the procurement item before the procurement unit receives the procurement item.
 - (b) A procurement official's determination under Subsection (2)(a) shall be in writing, unless:

- (i) the rulemaking authority has adopted a rule describing one or more circumstances under which a written determination is not necessary; and
 - (ii) the procurement official's determination is under one of those circumstances.
- (3) Circumstances where prepayment may be necessary for, or beneficial to, the procurement unit include:
- (a) when it is customary in the industry to prepay for the procurement item;
 - (b) if the procurement unit will receive an identifiable benefit by prepaying, including reduced costs, additional procurement items, early delivery, better service, or better contract terms; or
 - (c) other circumstances permitted by rule made by the rulemaking authority.
- (4) The rulemaking authority may make rules governing prepayments.
- (5) A prepaid expenditure shall be supported by documentation indicating:
- (a) the amount of the prepayment;
 - (b) the prepayment schedule;
 - (c) the procurement items to which each prepayment relates;
 - (d) the remedies for a contractor's noncompliance with requirements relating to the provision of the procurement items; and
 - (e) all other terms and conditions relating to the payments and the procurement items.
- (6) The procurement official or the procurement official's designee may require a performance bond, of up to 100% of the prepayment amount, from the person to whom the prepayments are made.

Amended by Chapter 257, 2020 General Session

63G-6a-1209 Leases.

- (1) As used in this section, "lease" means for a procurement unit to lease or lease-purchase a procurement item from a person.
- (2) This section does not apply to the lease of real property.
- (3) A procurement unit may not lease a procurement item unless the procurement unit complies with the requirements of this section.
- (4) A procurement unit may lease a procurement item if:
 - (a) the procurement officer determines that it is in the best interest of the procurement unit to lease the procurement item, after the procurement officer:
 - (i) investigates alternative means of obtaining the procurement item; and
 - (ii) considers the costs and benefits of the alternative means of obtaining the procurement item;
 - (b) all conditions for renewal and cost are included in the lease;
 - (c) the lease is awarded through a standard procurement process, or an exception to a standard procurement process described in Part 8, Exceptions to Procurement Requirements;
 - (d) for a standard procurement process, the invitation for bids, request for proposals, or request for quotes states:
 - (i) that the procurement unit is seeking, or willing to consider, a lease; and
 - (ii) for a lease purchase, that the procurement unit is seeking, or willing to consider, a lease-purchase;
 - (e) the lease is not used to avoid competition; and
 - (f) the lease complies with all other provisions of law or rule applicable to the lease.

Amended by Chapter 354, 2020 General Session

63G-6a-1210 Contract provisions for incentives, damages, and penalties.

A procurement unit may include in a contract terms that provide for:

- (1) incentives, including bonuses;
- (2) payment of damages, including liquidated damages; or
- (3) penalties.

Enacted by Chapter 445, 2013 General Session

Part 13

General Construction Provisions

63G-6a-1301 Title.

This part is known as "General Construction Provisions."

Enacted by Chapter 347, 2012 General Session

63G-6a-1302 Alternative methods of construction contracting management.

- (1) A rulemaking authority shall, by rule provide as many alternative methods of construction contracting management as determined to be feasible.
- (2) The rules described in Subsection (1) shall:
 - (a) grant to the procurement official responsible for carrying out the construction project the discretion to select the appropriate method of construction contracting management for a particular project; and
 - (b) require the procurement official to execute and include in the contract file a written statement describing the facts that led to the selection of a particular method of construction contracting management for each project.
- (3) Before choosing a construction contracting management method, the procurement official responsible for carrying out the construction project shall consider the following factors:
 - (a) when the project must be ready to be occupied;
 - (b) the type of project;
 - (c) the extent to which the requirements of the procurement unit, and the way they are to be met are known;
 - (d) the location of the project;
 - (e) the size, scope, complexity, and economics of the project;
 - (f) the source of funding and any resulting constraints necessitated by the funding source;
 - (g) the availability, qualification, and experience of public personnel to be assigned to the project and the amount of time that the public personnel can devote to the project; and
 - (h) the availability, qualifications, and experience of outside consultants and contractors to complete the project under the various methods being considered.
- (4) A rulemaking authority may make rules that authorize the use of a construction manager/general contractor as one method of construction contracting management.
- (5) The rules described in Subsection (2) shall require that:
 - (a) the construction manager/general contractor be selected using:
 - (i) a standard procurement process; or
 - (ii) an exception to the requirement to use a standard procurement process, described in Part 8, Exceptions to Procurement Requirements; and

- (b) when entering into a subcontract that was not specifically included in the construction manager/general contractor's cost proposal, the construction manager/general contractor shall procure the subcontractor by using a standard procurement process, or an exception to the requirement to use a standard procurement process, described in Part 8, Exceptions to Procurement Requirements, in the same manner as if the subcontract work was procured directly by the procurement unit.
- (6) Procurement rules adopted by the facilities division under Subsections (1) through (3) for state building construction projects may authorize the use of a design-build provider as one method of construction contracting management.
- (7) A design-build contract may include a provision for obtaining the site for the construction project.
- (8) A design-build contract or a construction manager/general contractor contract may include provision by the contractor of operations, maintenance, or financing.

Amended by Chapter 421, 2022 General Session

63G-6a-1303 Drug and alcohol testing required for state construction contracts.

- (1) As used in this section:
 - (a) "Contractor" means a person who is or may be awarded a state construction contract.
 - (b) "Covered individual" means an individual who:
 - (i) on behalf of a contractor or subcontractor provides services directly related to design or construction under a state construction contract; and
 - (ii) is in a safety sensitive position, including a design position that has responsibilities that directly affect the safety of an improvement to real property that is the subject of a state construction contract.
 - (c) "Drug and alcohol testing policy" means a policy under which a contractor or subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:
 - (i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug; or
 - (ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.
 - (d) "Random testing" means that a covered individual is subject to periodic testing for drugs and alcohol:
 - (i) in accordance with a drug and alcohol testing policy; and
 - (ii) on the basis of a random selection process.
 - (e) "State executive entity" means:
 - (i) a state executive branch:
 - (A) department;
 - (B) division;
 - (C) agency;
 - (D) board;
 - (E) commission;
 - (F) council;
 - (G) committee; or
 - (H) institution; or
 - (ii) a state institution of higher education, as defined in Section 53B-3-102.
 - (f) "State construction contract" means a contract for design or construction entered into by a state executive entity.

- (2) Except as provided in Subsection (7), a state executive entity may not enter into a state construction contract unless the public construction contract requires that the contractor demonstrate to the state executive entity that the contractor:
 - (a) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the contractor;
 - (b) posts in one or more conspicuous places notice to covered individuals hired by the contractor that the contractor has the drug and alcohol testing policy described in Subsection (2)(a);
 - (c) subjects the covered individuals to random testing under the drug and alcohol testing policy described in Subsection (2)(a) if at any time during the period of the state construction contract there are 10 or more individuals who are covered individuals hired by the contractor; and
 - (d) requires that as a condition of contracting with the contractor, a subcontractor:
 - (i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the subcontractor;
 - (ii) posts in one or more conspicuous places notice to covered individuals hired by the subcontractor that the subcontractor has the drug and alcohol testing policy described in Subsection (2)(d)(i); and
 - (iii) subjects the covered individuals hired by the subcontractor to random testing under the drug and alcohol testing policy described in Subsection (2)(d)(i) if at any time during the period of the state construction contract there are 10 or more individuals who are covered individuals hired by the subcontractor.
- (3)
 - (a) Except as otherwise provided in this Subsection (3), if a contractor or subcontractor fails to comply with Subsection (2), the contractor or subcontractor may be suspended or debarred in accordance with this chapter.
 - (b) A state executive entity shall include in a state construction contract:
 - (i) a reference to the rules described in Subsection (4)(b); or
 - (ii) if the rulemaking authority has not made the rules described in Subsection (4)(b), a process that provides a contractor or subcontractor reasonable notice and opportunity to cure a violation of this section before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation.
 - (c)
 - (i) A contractor is not subject to penalties for the failure of a subcontractor to comply with Subsection (2).
 - (ii) A subcontractor is not subject to penalties for the failure of a contractor to comply with Subsection (2).
- (4) A rulemaking authority:
 - (a) may make rules that establish the requirements and procedures a contractor is required to follow to comply with Subsection (2); and
 - (b) shall make rules that establish:
 - (i) the penalties that may be imposed in accordance with Subsection (3); and
 - (ii) a process that provides a contractor or subcontractor reasonable notice and opportunity to cure a violation of this section before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation.
- (5) The failure of a contractor or subcontractor to meet the requirements of Subsection (2):
 - (a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Part 17, Procurement Appeals Board, or Part 18, Appeals to Court and Court Proceedings; and

- (b) may not be used by a state executive entity, a prospective bidder, an offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or terminate the design or construction under a state construction contract.
- (6)
 - (a) After a state executive entity enters into a state construction contract in compliance with this section, the state is not required to audit, monitor, or take any other action to ensure compliance with this section.
 - (b) The state is not liable in any action related to this section, including not being liable in relation to:
 - (i) a contractor or subcontractor having or not having a drug and alcohol testing policy;
 - (ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and alcohol testing policy;
 - (iii) the requirements of a contractor's or subcontractor's drug and alcohol testing policy;
 - (iv) a contractor's or subcontractor's implementation of a drug and alcohol testing policy, including procedures for:
 - (A) collection of a sample;
 - (B) testing of a sample;
 - (C) evaluation of a test; or
 - (D) disciplinary or rehabilitative action on the basis of a test result;
 - (v) an individual being under the influence of drugs or alcohol; or
 - (vi) an individual under the influence of drugs or alcohol harming another person or causing property damage.
- (7) This section does not apply if the state executive entity determines that the application of this section would severely disrupt the operation of a procurement unit to the detriment of the procurement unit or the general public, including:
 - (a) jeopardizing the receipt of federal funds;
 - (b) causing the state construction contract to be a sole source contract; or
 - (c) causing the state construction contract to be an emergency procurement.
- (8) If a contractor or subcontractor meets the requirements of this section, this section may not be construed to restrict the contractor's or subcontractor's ability to impose or implement an otherwise lawful provision as part of a drug and alcohol testing policy.

Amended by Chapter 257, 2020 General Session

Part 14

Transportation Contracts

63G-6a-1401 Title.

This part is known as "Transportation Contracts."

Enacted by Chapter 347, 2012 General Session

63G-6a-1402 Procurement of design-build transportation project contracts.

(1) As used in this section:

- (a) "Design-build transportation project contract" means the procurement of both the design and construction of a transportation project in a single contract with a company or combination of companies capable of providing the necessary engineering services and construction.
- (b) "Transportation agency" means:
 - (i) the Department of Transportation;
 - (ii) a county of the first or second class, as defined in Section 17-50-501;
 - (iii) a municipality of the first class, as defined in Section 10-2-301;
 - (iv) a large public transit district as defined in Section 17B-2a-802; and
 - (v) a public airport authority.
- (2) Except as provided in Subsection (3), a transportation agency may award a design-build transportation project contract for any transportation project that has an estimated cost of at least \$50,000,000 by following the requirements of this section.
- (3)
 - (a) The Department of Transportation:
 - (i) may award a design-build transportation project contract for any transportation project by following the requirements of this section; and
 - (ii) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements for the procurement of its design-build transportation project contracts in addition to those required by this section.
 - (b) A public transit district that has more than 200,000 people residing within its boundaries:
 - (i) may award a design-build transportation project contract for any transportation project by following the requirements of this section; and
 - (ii) shall pass ordinances or a resolution establishing requirements for the procurement of its design-build transportation project contracts in addition to those required by this section.
 - (c) A design-build transportation project contract authorized under this Subsection (3) is not subject to the estimated cost threshold described in Subsection (2).
 - (d) A design-build transportation project contract may include provision by the contractor of operations, maintenance, or financing.
- (4)
 - (a) Before entering into a design-build transportation project contract, a transportation agency may issue a request for qualifications to prequalify potential contractors.
 - (b) Public notice of the request for qualifications shall be given in accordance with board rules.
 - (c) A transportation agency shall require, as part of the qualifications specified in the request for qualifications, that potential contractors at least demonstrate their:
 - (i) construction experience;
 - (ii) design experience;
 - (iii) financial, manpower, and equipment resources available for the project; and
 - (iv) experience in other design-build transportation projects with attributes similar to the project being procured.
 - (d) The request for qualifications shall identify the number of eligible competing proposers that the transportation agency will select to submit a proposal, which may not be less than two.
- (5) The transportation agency shall:
 - (a) evaluate the responses received from the request for qualifications;
 - (b) select from their number those qualified to submit proposals; and
 - (c) invite those respondents to submit proposals based upon the transportation agency's request for proposals.
- (6) If the transportation agency fails to receive at least two qualified eligible competing proposals, the transportation agency shall readvertise the project.

- (7) The transportation agency shall issue a request for proposals to those qualified respondents that:
- (a) includes a scope of work statement constituting an information for proposal that may include:
 - (i) preliminary design concepts;
 - (ii) design criteria, needs, and objectives;
 - (iii) warranty and quality control requirements;
 - (iv) applicable standards;
 - (v) environmental documents;
 - (vi) constraints;
 - (vii) time expectations or limitations;
 - (viii) incentives or disincentives; and
 - (ix) other special considerations;
 - (b) requires submitters to provide:
 - (i) a sealed cost proposal;
 - (ii) a critical path matrix schedule, including cash flow requirements;
 - (iii) proposal security; and
 - (iv) other items required by the department for the project; and
 - (c) may include award of a stipulated fee to be paid to offerors who submit unsuccessful proposals.
- (8) The transportation agency shall:
- (a) evaluate the submissions received in response to the request for proposals from the prequalified offerors;
 - (b) comply with rules relating to discussion of proposals, best and final offers, and evaluations of the proposals submitted; and
 - (c) after considering price and other identified factors, award the contract to the responsible offeror whose responsive proposal is most advantageous to the transportation agency or the state.

Amended by Chapter 424, 2018 General Session

63G-6a-1403 Procurement of tollway development agreements.

- (1) As used in this section, "tollway development agreement" means the same as that term is defined in Section 72-6-202.
- (2) The Department of Transportation and the Transportation Commission:
- (a) may solicit a tollway development agreement proposal by following the requirements of this section;
 - (b) may award a solicited tollway development agreement contract for any tollway project by following the requirements of this section; and
 - (c) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements for the procurement of tollway development agreement proposals in addition to those required by this section.
- (3)
- (a) Before entering into a tollway development agreement, the Department of Transportation may issue a request for qualifications to prequalify potential contractors.
 - (b) Public notice of the request for qualifications shall be given in accordance with board rules.
 - (c) The Department of Transportation shall require, as part of the qualifications specified in the request for qualifications, that potential contractors at least provide:

- (i) a demonstration of their experience with other transportation concession projects with attributes similar to the project being procured;
 - (ii) a financial statement of the firm or consortium of firms making the proposal;
 - (iii) a conceptual project development plan and financing plan;
 - (iv) the legal structure of the firm or consortium of firms making the proposal;
 - (v) the organizational structure for the project; and
 - (vi) a statement describing why the firm or consortium of firms is best qualified for the project.
- (d) The request for qualifications shall identify the number of eligible competing offerors that the Department of Transportation will select to submit a proposal.
- (4) The Department of Transportation shall:
- (a) evaluate the responses received from the request for qualifications;
 - (b) select from their number those qualified to submit proposals; and
 - (c) invite those respondents to submit proposals based upon the Department of Transportation's request for proposals.
- (5) The Department of Transportation shall issue a request for proposals to those qualified respondents that may require, as appropriate for the procurement:
- (a) a description of the proposed project or projects;
 - (b) a financial plan for the project, including:
 - (i) the anticipated financial commitment of all parties;
 - (ii) equity, debt, and other financing mechanisms;
 - (iii) an analysis of the projected return, rate of return, or both; and
 - (iv) the monetary benefit and other value to a government entity;
 - (c) assumptions about user fees or toll rates;
 - (d) a project development and management plan, including:
 - (i) the contracting structure;
 - (ii) the plan for quality management;
 - (iii) the proposed toll enforcement plan; and
 - (iv) the plan for safety management; and
 - (e) that the proposal comply with the minimum guidelines for tollway development agreement proposals under Section 72-6-204.
- (6) The Department of Transportation and the Transportation Commission:
- (a) shall evaluate the submissions received in response to the request for proposals from the prequalified offerors;
 - (b) shall comply with rules relating to discussion of proposals, best and final offers, and evaluations of the proposals submitted; and
 - (c) may, after considering price and other identified factors and complying with the requirements of Section 72-6-206, award the contract to the responsible offeror whose responsive proposal is most advantageous to the state.

Amended by Chapter 354, 2020 General Session

Part 15

Design Professional Services

63G-6a-1501 Title.

This part is known as "Design Professional Services."

Amended by Chapter 218, 2015 General Session

63G-6a-1502 Requirements regarding procurement of design professional services.

- (1) A procurement unit seeking to procure design professional services shall:
 - (a) publicly announce all requirements for those services through a request for statement of qualifications, as provided in this part; and
 - (b) negotiate contracts for design professional services:
 - (i) on the basis of demonstrated competence and qualification for the type of services required; and
 - (ii) at fair and reasonable prices.
- (2) A procurement unit shall procure design professional services as provided in this part, except as otherwise provided in Sections 63G-6a-506, 63G-6a-802, and 63G-6a-803.
- (3) A procurement unit may procure professional services, other than design professional services, as provided in this part.
- (4) This part does not affect the authority of, and does not apply to procedures undertaken by, a procurement unit to obtain the services of architects or engineers in the capacity of employees of the procurement unit.

Amended by Chapter 257, 2020 General Session

63G-6a-1502.5 Request for statement of qualifications.

- (1) A procurement unit may establish criteria in a request for statement of qualifications by which the qualifications of a design professional, as set forth in a statement of qualifications, will be evaluated, including:
 - (a) the design professional's work history and experience;
 - (b) performance ratings earned by the design professional or references for similar work;
 - (c) any quality assurance or quality control plan;
 - (d) the quality of the design professional's past work product;
 - (e) the time, manner of delivery, and schedule of delivery of the design professional services;
 - (f) the design professional's financial solvency;
 - (g) any management plan, including key personnel and subconsultants for the project; and
 - (h) other project specific criteria that the procurement unit establishes.
- (2) A request for statement of qualifications may not include a request for a price or a cost component for the design professional services.

Enacted by Chapter 218, 2015 General Session

63G-6a-1503 Evaluation committee for design professional services.

- (1) In the procurement of design professional services, the procurement officer or the head of an issuing procurement unit shall encourage design professionals engaged in the lawful practice of their profession to submit a statement of qualifications.
- (2)
 - (a) The director of the Division of Facilities Construction and Management shall appoint an evaluation committee for design professional services procurements under its authority.
 - (b) A conducting procurement unit, other than the Division of Facilities Construction and Management, shall appoint an evaluation committee for design professional services procurements under the authority of that procurement unit.

- (3)
 - (a) An evaluation committee appointed under Subsection (2) shall consist of at least three members.
 - (b) A procurement unit appointing an evaluation committee under this section shall ensure that each member of the evaluation committee:
 - (i) does not have a conflict of interest with any of the design professionals under consideration;
 - (ii) can fairly evaluate each statement of qualifications;
 - (iii) does not contact or communicate with any of the design professionals under consideration concerning the request for statement of qualifications outside the official evaluation committee process, beginning the date that the request for statement of qualifications is issued until the selection of the design professional has been made; and
 - (iv) conducts the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.
- (4) An evaluation committee appointed under this section shall:
 - (a) evaluate current statements of qualifications and performance data on file with the procurement unit, together with those that may be submitted by other design professionals in response to the announcement of a proposed contract;
 - (b) consider no fewer than three design professionals; and
 - (c) based upon criteria established and published by the conducting procurement unit, select no fewer than three of the design professionals considered to be the most highly qualified to provide the services required.

Amended by Chapter 218, 2015 General Session

63G-6a-1503.5 Evaluation of statements of qualifications.

- (1) An evaluation committee appointed under Section 63G-6a-1503 shall evaluate and score each responsive statement of qualifications that has not been eliminated from consideration under this chapter, using the criteria described in the request for statement of qualifications.
- (2) Criteria not described in the request for statement of qualifications may not be used to evaluate a statement of qualifications.
- (3) An evaluation committee may enter into discussions or conduct interviews with, or attend presentations by, the design professionals whose statements of qualifications are under consideration.
- (4) An evaluation committee shall rank the top three highest scoring design professionals, in order of their scores, for the purpose of entering into fee negotiations as provided in Section 63G-6a-1505.
- (5) If fewer than three responsible design professionals submit statements of qualifications that are determined to be responsive, the procurement official shall issue a written determination explaining why it is in the best interest of the procurement unit to continue the fee negotiation and the contracting process with less than three design professionals.
- (6)
 - (a) The deliberations of an evaluation committee may be held in private.
 - (b) If the evaluation committee is a public body, as defined in Section 52-4-103, the evaluation committee shall comply with Section 52-4-205 in closing a meeting for its deliberations.

Amended by Chapter 257, 2020 General Session

63G-6a-1504 Selection as part of design-build or lease.

Notwithstanding any other provision of this chapter, design professional services may be procured under Title 63A, Chapter 5b, Administration of State Facilities, as part of the services obtained in a design-build contract or as part of the services obtained in a lease contract for real property, if the qualifications of those providing the design professional services are part of the consideration in the selection process.

Amended by Chapter 218, 2015 General Session

63G-6a-1505 Determination of compensation for design professional services.

- (1) The procurement officer shall award a contract to the qualified design professional whose statement of qualifications was awarded the highest score under Subsection 63G-6a-1503(4) by the evaluation committee, at compensation that the procurement officer determines, in writing, to be fair and reasonable to the procurement unit.
- (2) In making the determination described in Subsection (1), the procurement officer shall take into account:
 - (a) the estimated value, scope, and professional nature of the services; and
 - (b) the complexity of the project or services.
- (3) If the procurement officer is unable to agree to a satisfactory contract with the highest scoring design professional, at a price the procurement officer determines to be fair and reasonable to the procurement unit, the procurement officer shall:
 - (a) formally terminate discussions with that design professional; and
 - (b) undertake discussions with the second highest scoring, qualified design professional.
- (4) If the procurement officer is unable to agree to a satisfactory contract with the second highest scoring design professional, at a price the procurement officer determines to be fair and reasonable to the procurement unit, the procurement officer shall:
 - (a) formally terminate discussions with that design professional; and
 - (b) undertake discussions with the third highest scoring, qualified design professional.
- (5) If the procurement officer is unable to award a contract at a fair and reasonable price to any of the highest scoring design professionals, the procurement officer shall:
 - (a) select additional design professionals; and
 - (b) continue discussions in accordance with this part until an agreement is reached.

Amended by Chapter 218, 2015 General Session

63G-6a-1506 Restrictions on procurement of design professional services.

- (1) Except as provided in Subsection (2), if the division or an independent procurement unit, in accordance with Section 63G-6a-1502, issues a request for statement of qualifications to procure design professional services and provides public notice of the request for statement of qualifications:
 - (a) a public entity inside or outside the state may not submit a proposal in response to the procurement unit's request for statement of qualifications; and
 - (b) the procurement unit may not award a contract to a public entity inside or outside the state to perform the design professional services solicited in the request for statement of qualifications.
- (2) Subsection (1) does not apply when the procurement unit is procuring design professional services for contracts related to research activities and technology transfer.

Amended by Chapter 257, 2020 General Session

Part 16 Protests

63G-6a-1601 Title.

This part is known as " Protests."

Amended by Chapter 355, 2016 General Session

63G-6a-1601.5 Definitions.

As used in this part:

- (1) "Constructive knowledge":
 - (a) means knowledge or information that a protestor would have if the protestor had exercised reasonable care or diligence, regardless of whether the protestor actually has the knowledge or information; and
 - (b) includes knowledge of:
 - (i) applicable provisions of this chapter and other law and administrative rule;
 - (ii) instructions, criteria, deadlines, and requirements contained in the solicitation or in other documents made available to persons interested in the solicitation or provided in a mandatory pre-solicitation meeting;
 - (iii) relevant facts and evidence supporting the protest or leading the protestor to contend that the protestor has been aggrieved in connection with a procurement;
 - (iv) communications or actions, pertaining to the procurement, of all persons within the protestor's organization or under the supervision of the protestor; and
 - (v) any other applicable information discoverable by the exercise of reasonable care or diligence.
- (2) "Hearing" means a proceeding in which evidence, which may include oral testimony, or argument relevant to a protest is presented to a protest officer in connection with the protest officer's determination of an issue of fact or law or both.
- (3) "Protest appeal record" means:
 - (a) a copy of the protest officer's written decision;
 - (b) all documentation and other evidence the protest officer relied upon in reaching the protest officer's decision;
 - (c) the recording of the hearing, if the protest officer held a hearing;
 - (d) a copy of the protestor's written protest; and
 - (e) all documentation and other evidence submitted by the protestor supporting the protest or the protestor's claim of standing.
- (4) "Protestor" means a person who files a protest under this part.
- (5) "Standing" means to have suffered an injury or harm or to be about to suffer imminent injury or harm, if:
 - (a) the cause of the injury or harm is:
 - (i) an infringement of the protestor's own right and not the right of another person who is not a party to the procurement;
 - (ii) reasonably connected to the procurement unit's conduct; and
 - (iii) the sole reason the protestor is not considered, or is no longer considered, for an award of a contract under the procurement that is the subject of the protest;

- (b) a decision on the protest in favor of the protestor:
 - (i) is likely to redress the injury or harm; and
 - (ii) would give the protestor a reasonable likelihood of being awarded a contract; and
- (c) the protestor has the legal authority to file the protest on behalf of the actual or prospective bidder or offeror or prospective contractor involved in the procurement that is the subject of the protest.

Amended by Chapter 348, 2017 General Session

63G-6a-1602 Protest -- Time for filing -- Basis of protest -- Authority to resolve protest.

- (1) A protest may be filed with the protest officer by a person who:
 - (a) has standing; and
 - (b) is aggrieved in connection with a procurement or an award of a contract.
- (2) A protest may not be filed after:
 - (a)
 - (i)
 - (A) the opening of bids, for a protest relating to a procurement under a bidding process; or
 - (B) the deadline for submitting responses to the solicitation, for a protest relating to another standard procurement process; or
 - (ii) the closing of the procurement stage that is the subject of the protest:
 - (A) if the protest relates to a multiple-stage procurement; and
 - (B) notwithstanding Subsections (2)(a)(i)(A) and (B); or
 - (b) the day that is seven days after the day on which the person knows or first has constructive knowledge of the facts giving rise to the protest, if:
 - (i) the protestor did not know and did not have constructive knowledge of the facts giving rise to the protest before:
 - (A) the opening of bids, for a protest relating to a procurement under a bidding process;
 - (B) the deadline for submitting responses to the solicitation, for a protest relating to another standard procurement process; or
 - (C) the closing of the procurement stage that is the subject of the protest, if the protest relates to a multiple-stage procurement; or
 - (ii) the protest relates to a procurement process not described in Subsection (2)(a).
- (3) A deadline under Subsection (2) for filing a protest may not be modified.
- (4)
 - (a) A protestor shall include in a protest:
 - (i) the protestor's mailing address and email address; and
 - (ii) a concise statement of the facts and evidence:
 - (A) leading the protestor to claim that the protestor has been aggrieved in connection with a procurement and providing the grounds for the protestor's protest; and
 - (B) supporting the protestor's claim of standing.
 - (b) A protest may not be considered unless it contains facts and evidence that, if true, would establish:
 - (i) a violation of this chapter or other applicable law or rule;
 - (ii) the procurement unit's failure to follow a provision of a solicitation;
 - (iii) an error made by an evaluation committee or conducting procurement unit;
 - (iv) a bias exercised by an evaluation committee or an individual committee member, excluding a bias that is a preference arising during the evaluation process because of how well a solicitation response meets criteria in the solicitation;

- (v) a failure to correctly apply or calculate a scoring criterion; or
 - (vi) that specifications in a solicitation are unduly restrictive or unduly anticompetitive.
- (5) A protest may not be based on:
- (a) the rejection of a solicitation response due to a protestor's failure to attend or participate in a mandatory conference, meeting, or site visit held before the deadline for submitting a solicitation response;
 - (b) a vague or unsubstantiated allegation; or
 - (c) a person's claim that:
 - (i) a procurement unit that complied with Section 63G-6a-112 did not provide individual notice of a solicitation to the person; or
 - (ii) the person received late notice of a solicitation for which notice was provided in accordance with Section 63G-6a-112.
- (6) A protest may not include a request for:
- (a) an explanation of the rationale or scoring of evaluation committee members;
 - (b) the disclosure of a protected record or protected information in addition to the information provided under the disclosure provisions of this chapter; or
 - (c) other information, documents, or explanations not explicitly provided for in this chapter.
- (7) A person who fails to file a protest within the time prescribed in Subsection (2) may not:
- (a) protest to the protest officer a solicitation or award of a contract; or
 - (b) file an action or appeal challenging a solicitation or award of a contract before an appeals panel, a court, or any other forum.
- (8) Subject to the applicable requirements of Section 63G-10-403, a protest officer or the head of a procurement unit may enter into a settlement agreement to resolve a protest.

Amended by Chapter 348, 2017 General Session

63G-6a-1603 Protest officer responsibilities and authority -- Proceedings on protest -- Effect of decision.

- (1) After a protest is filed, the protest officer shall determine whether the protest is timely filed and complies fully with the requirements of Section 63G-6a-1602.
- (2) If the protest officer determines that the protest is not timely filed or that the protest does not fully comply with Section 63G-6a-1602, the protest officer shall dismiss the protest without holding a hearing.
- (3) If the protest officer determines that the protest is timely filed and complies fully with Section 63G-6a-1602, the protest officer shall:
 - (a) dismiss the protest without holding a hearing if the protest officer determines that the protest alleges facts that, if true, do not provide an adequate basis for the protest;
 - (b) uphold the protest without holding a hearing if the protest officer determines that the undisputed facts of the protest indicate that the protest should be upheld; or
 - (c) hold a hearing on the protest if there is a genuine issue of material fact or law that needs to be resolved in order to determine whether the protest should be upheld.
- (4)
 - (a) If a hearing is held on a protest, the protest officer may:
 - (i) subpoena witnesses and compel their attendance at the protest hearing;
 - (ii) subpoena documents for production at the protest hearing;
 - (iii) obtain additional factual information; and
 - (iv) obtain testimony from experts, the person filing the protest, representatives of the procurement unit, or others to assist the protest officer to make a decision on the protest.

- (b) The Rules of Evidence do not apply to a protest hearing.
 - (c) A rulemaking authority shall make rules relating to intervention in a protest, including designating:
 - (i) who may intervene; and
 - (ii) the time and manner of intervention.
 - (d) A protest officer shall:
 - (i) record each hearing held on a protest under this section;
 - (ii) regardless of whether a hearing on a protest is held under this section, preserve all records and other evidence relied upon in reaching the protest officer's written decision until the decision, and any appeal of the decision, becomes final; and
 - (iii) if the protestor appeals the protest officer's decision, submit the protest appeal record to the procurement policy board chair within seven days after receiving:
 - (A) notice that an appeal of the protest officer's decision has been filed under Section 63G-6a-1702; or
 - (B) a request for the protest appeal record from the chair of the procurement policy board.
 - (e) A protest officer's holding a hearing, considering a protest, or issuing a written decision under this section does not affect a person's right to later question or challenge the protest officer's jurisdiction to hold the hearing, consider the protest, or issue the decision.
- (5)
- (a) The deliberations of a protest officer may be held in private.
 - (b) If the protest officer is a public body, as defined in Section 52-4-103, the protest officer shall comply with Section 52-4-205 in closing a meeting for its deliberations.
- (6)
- (a) A protest officer shall promptly issue a written decision regarding any protest, unless the protest is settled by mutual agreement.
 - (b) The decision shall:
 - (i) state the reasons for the action taken;
 - (ii) inform the protestor of the right to judicial or administrative review as provided in this chapter; and
 - (iii) indicate the amount of the security deposit or bond required under Section 63G-6a-1703.
 - (c) A person who issues a decision under Subsection (6)(a) shall mail, email, or otherwise immediately furnish a copy of the decision to the protestor.
- (7) A decision described in this section is effective until stayed or reversed on appeal, except to the extent provided in Section 63G-6a-1903.
- (8)
- (a) A decision described in Subsection (6)(a) that is issued in relation to a procurement unit other than a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district is final and conclusive unless the protestor files an appeal under Section 63G-6a-1702.
 - (b) A decision described in Subsection (6)(a) that is issued in relation to a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district is final and conclusive unless the protestor files an appeal under Section 63G-6a-1802.
- (9) If the protest officer does not issue the written decision regarding a protest within 30 calendar days after the day on which the protest was filed with the protest officer, or within a longer period as may be agreed upon by the parties, the protestor may proceed as if an adverse decision had been received.

- (10) A determination under this section by the protest officer regarding an issue of fact may not be overturned on appeal unless the decision is arbitrary and capricious or clearly erroneous.
- (11) An individual is not precluded from acting, and may not be disqualified or required to be recused from acting, as a protest officer because the individual also acted in another capacity during the procurement process, as required or allowed in this chapter.

Amended by Chapter 257, 2020 General Session

Part 17

Procurement Appeals Board

63G-6a-1701 Title.

This part is known as "Procurement Appeals Board."

Enacted by Chapter 347, 2012 General Session

63G-6a-1701.5 Definitions.

As used in this part:

- (1) "Appointing officer" means:
- (a) the chair of the board; or
 - (b) a designee of the chair who is not employed by the procurement unit responsible for the solicitation, contract award, or other action that is the subject of the protestor's protest.
- (2) "Protest appeal record" means the same as that term is defined in Section 63G-6a-1601.5.
- (3) "Protestor" means the same as that term is defined in Section 63G-6a-1601.5.

Enacted by Chapter 348, 2017 General Session

63G-6a-1702 Appeal to Utah State Procurement Policy Board -- Appointment of procurement appeals panel -- Proceedings.

- (1) Subject to Section 63G-6a-2507, this part applies to all procurement units other than:
- (a) a legislative procurement unit;
 - (b) a judicial procurement unit;
 - (c) a nonadopting local government procurement unit; or
 - (d) a public transit district.
- (2)
- (a) Subject to Section 63G-6a-1703, a protestor may appeal to the board a protest decision of a procurement unit that is subject to this part by filing a written notice of appeal with the chair of the board within seven days after:
 - (i) the day on which the written decision described in Section 63G-6a-1603 is:
 - (A) personally served on the party or the party's representative; or
 - (B) emailed or mailed to the address or email address provided by the party under Subsection 63G-6a-1602(4); or
 - (ii) the day on which the 30-day period described in Subsection 63G-6a-1603(9) ends, if a written decision is not issued before the end of the 30-day period.
 - (b) A notice of appeal under Subsection (2)(a) shall:

- (i) include the address of record and email address of record of the party filing the notice of appeal; and
 - (ii) be accompanied by a copy of any written protest decision.
- (c) The deadline for appealing a protest decision may not be modified.
- (3) A person may not base an appeal of a protest under this section on:
 - (a) a ground not specified in the person's protest under Section 63G-6a-1602; or
 - (b) new or additional evidence not considered by the protest officer.
- (4)
 - (a) A person may not appeal from a protest described in Section 63G-6a-1602, unless:
 - (i) a decision on the protest has been issued; or
 - (ii) a decision is not issued and the 30-day period described in Subsection 63G-6a-1603(9), or a longer period agreed to by the parties, has passed.
 - (b) A procurement unit may not appeal a protest decision or other determination made by the procurement unit's protest officer.
- (5)
 - (a) Within seven days after the chair of the board receives a written notice of an appeal under this section, the chair shall submit a written request to the protest officer for the protest appeal record.
 - (b) Within seven days after the chair receives the protest appeal record from the protest officer, the appointing officer shall, in consultation with the attorney general's office:
 - (i) review the appeal to determine whether the appeal complies with the requirements of Subsections (2), (3), and (4) and Section 63G-6a-1703; and
 - (ii)
 - (A) dismiss any claim asserted in the appeal, or dismiss the appeal, without holding a hearing if the appointing officer determines that the claim or appeal, respectively, fails to comply with any of the requirements listed in Subsection (5)(b)(i); or
 - (B) appoint a procurement appeals panel to conduct an administrative review of any claim in the appeal that has not been dismissed under Subsection (5)(b)(ii)(A), if the appointing officer determines that one or more claims asserted in the appeal comply with the requirements listed in Subsection (5)(b)(i).
 - (c) A procurement appeals panel appointed under Subsection (5)(b)(ii) shall consist of an odd number of at least three individuals, each of whom is:
 - (i) a member of the board; or
 - (ii) a designee of a member appointed under Subsection (5)(c)(i), if the designee is approved by the chair of the board.
 - (d) The appointing officer shall appoint one of the members of the procurement appeals panel to serve as the coordinator of the panel.
 - (e) The appointing officer may:
 - (i) appoint the same procurement appeals panel to hear more than one appeal; or
 - (ii) appoint a separate procurement appeals panel for each appeal.
 - (f) The appointing officer may not appoint a person to a procurement appeals panel if the person is employed by the procurement unit responsible for the solicitation, contract award, or other action that is the subject of the protestor's protest.
 - (g) The appointing officer shall, at the time the procurement appeals panel is appointed, provide appeals panel members with a copy of the notice of appeal filed under Subsection (2) and the protest decision record.
- (6)
 - (a) A procurement appeals panel described in Subsection (5):

- (i) shall conduct an administrative review of the appeal within 30 days after the day on which the procurement appeals panel is appointed, or before a later date that all parties agree upon, unless the appeal is dismissed under Subsection (8)(a); and
- (ii)
 - (A) may, as part of the administrative review and at the sole discretion of the procurement appeals panel, conduct an informal hearing, if the procurement appeals panel considers a hearing to be necessary; and
 - (B) if the procurement appeals panel conducts an informal hearing, shall, at least seven days before the hearing, mail, email, or hand-deliver a written notice of the hearing to the parties to the appeal.
- (b) A procurement appeals panel may, during an informal hearing, ask questions and receive responses regarding the appeal and the protest appeal record to assist the procurement appeals panel to understand the basis of the appeal and information contained in the protest appeal record, but may not otherwise take any additional evidence or consider any additional ground for the appeal.
- (7) A procurement appeals panel shall consider and decide the appeal based solely on:
 - (a) the notice of appeal and the protest appeal record; and
 - (b) responses received during an informal hearing, if an informal hearing is held and to the extent allowed under Subsection (6)(b).
- (8) A procurement appeals panel:
 - (a) may dismiss an appeal if the appeal does not comply with the requirements of this chapter; and
 - (b) shall uphold the protest decision unless the protest decision is arbitrary and capricious or clearly erroneous.
- (9) The procurement appeals panel shall, within seven days after the day on which the procurement appeals panel concludes the administrative review:
 - (a) issue a written decision on the appeal; and
 - (b) mail, email, or hand-deliver the written decision on the appeal to the parties to the appeal and to the protest officer.
- (10)
 - (a) The deliberations of a procurement appeals panel may be held in private.
 - (b) If the procurement appeals panel is a public body, as defined in Section 52-4-103, the procurement appeals panel shall comply with Section 52-4-205 in closing a meeting for its deliberations.
- (11) A procurement appeals panel may continue an administrative review under this section beyond the 30-day period described in Subsection (6)(a)(i) if the procurement appeals panel determines that the continuance is in the interests of justice.
- (12) If a procurement appeals panel determines that the decision of the protest officer is arbitrary and capricious or clearly erroneous, the procurement appeals panel:
 - (a) shall remand the matter to the protest officer, to cure the problem or render a new decision;
 - (b) may recommend action that the protest officer should take; and
 - (c) may not order that:
 - (i) a contract be awarded to a certain person;
 - (ii) a contract or solicitation be cancelled; or
 - (iii) any other action be taken other than the action described in Subsection (12)(a).
- (13) The board shall make rules relating to the conduct of an appeals proceeding, including rules that provide for:
 - (a) expedited proceedings; and

- (b) electronic participation in the proceedings by panel members and participants.
- (14) The Utah Rules of Evidence do not apply to a hearing held by a procurement appeals panel.
- (15) Part 20, Records, applies to the records involved in the process described in this section, including the decision issued by a procurement appeals panel.

Amended by Chapter 291, 2024 General Session

63G-6a-1703 Requirement to pay a security deposit or post a bond -- Exceptions -- Amount -- Forfeiture of security deposit or bond.

- (1) A person who files a notice of appeal under Section 63G-6a-1702 shall, before the expiration of the time provided under Subsection 63G-6a-1702(2) for filing a notice of appeal, pay a security deposit or post a bond with the office of the protest officer.
- (2) The amount of a security deposit or bond required under Subsection (1) is:
 - (a) for an appeal relating to an invitation for bids or request for proposals and except as provided in Subsection (2)(b)(ii):
 - (i) \$20,000, if the total contract value is under \$500,000;
 - (ii) \$25,000, if the total contract value is \$500,000 or more but less than \$1,000,000;
 - (iii) \$50,000, if the total contract value is \$1,000,000 or more but less than \$2,000,000;
 - (iv) \$95,000, if the total contract value is \$2,000,000 or more but less than \$4,000,000;
 - (v) \$180,000, if the total contract value is \$4,000,000 or more but less than \$8,000,000;
 - (vi) \$320,000, if the total contract value is \$8,000,000 or more but less than \$16,000,000;
 - (vii) \$600,000, if the total contract value is \$16,000,000 or more but less than \$32,000,000;
 - (viii) \$1,100,000, if the total contract value is \$32,000,000 or more but less than \$64,000,000;
 - (ix) \$1,900,000, if the total contract value is \$64,000,000 or more but less than \$128,000,000;
 - (x) \$3,500,000, if the total contract value is \$128,000,000 or more but less than \$256,000,000;
 - (xi) \$6,400,000, if the total contract value is \$256,000,000 or more but less than \$512,000,000;
 - and
 - (xii) \$10,200,000, if the total contract value is \$512,000,000 or more; or
 - (b) \$20,000, for an appeal:
 - (i) relating to any type of procurement process other than an invitation for bids or request for proposals;
 - (ii) relating to an invitation for bids or request for proposals, if the estimated total contract value cannot be determined; or
 - (iii) of a debarment or suspension.
- (3)
 - (a) For an appeal relating to an invitation for bids, the estimated total contract value shall be based on:
 - (i) the lowest responsive bid amount for the entire term of the contract, excluding any renewal period, if the bid opening has occurred;
 - (ii) the total budget for the procurement item for the entire term of the contract, excluding any renewal period, if bids are based on unit or rate pricing; or
 - (iii) if the contract is being rebid, the historical usage and amount spent on the contract over the life of the contract.
 - (b) For an appeal relating to a request for proposals, the estimated total contract value shall be based on:
 - (i) the lowest cost proposed in a response to a request for proposals, considering the entire term of the contract, excluding any renewal period, if the opening of proposals has occurred;

- (ii) the total budget for the procurement item over the entire term of the contract, excluding any renewal period, if opened cost proposals are based on unit or rate pricing; or
 - (iii) if the contract is being reissued, the historical usage and amount spent on the contract over the life of the contract that is being reissued.
- (4) The protest officer shall:
- (a) retain the security deposit or bond until the protest and any appeal of the protest decision is final;
 - (b) as it relates to a security deposit:
 - (i) deposit the security deposit into an interest-bearing account; and
 - (ii) after any appeal of the protest decision becomes final, return the security deposit and the interest it accrues to the person who paid the security deposit, unless the security deposit is forfeited to the general fund of the procurement unit under Subsection (5); and
 - (c) as it relates to a bond:
 - (i) retain the bond until the protest and any appeal of the protest decision becomes final; and
 - (ii) after the protest and any appeal of the protest decision becomes final, return the bond to the person who posted the bond, unless the bond is forfeited to the general fund of the procurement unit under Subsection (5).
- (5) A security deposit that is paid, or a bond that is posted, under this section shall forfeit to the general fund of the procurement unit if:
- (a) the person who paid the security deposit or posted the bond fails to ultimately prevail on appeal; and
 - (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its primary purpose is to harass or cause a delay.

Amended by Chapter 348, 2017 General Session

63G-6a-1704 Discontinued appeal with prejudice, except as authorized.

After notice of an appeal to the board is filed under Section 63G-6a-1702, no party may discontinue the appeal without prejudice, except as authorized by the procurement appeals panel appointed for the appeal.

Amended by Chapter 445, 2013 General Session

63G-6a-1705 Factual determination of procurement appeals panel final and conclusive.

A determination of an issue of fact by a procurement appeals panel may not be overturned on appeal, unless the determination is arbitrary and capricious or clearly erroneous.

Amended by Chapter 91, 2012 General Session

Renumbered and Amended by Chapter 347, 2012 General Session

Amended by Chapter 347, 2012 General Session, (Coordination Clause)

Part 18

Appeals to Court and Court Proceedings

63G-6a-1801 Title.

This part is known as "Appeals to Court and Court Proceedings."

Enacted by Chapter 347, 2012 General Session

63G-6a-1802 Appeal to Utah Court of Appeals.

- (1)
 - (a) As provided in this part:
 - (i) a person may appeal a dismissal of an appeal by the board chair under Subsection 63G-6a-1702(5)(b)(ii)(A);
 - (ii) a person who receives an adverse decision by a procurement appeals panel may appeal that decision;
 - (iii) subject to Subsection (2), a procurement unit, other than a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district, may appeal an adverse decision by a procurement appeals panel; and
 - (iv) a person who receives an adverse decision in a protest relating to a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district may appeal that decision.
 - (b) A person seeking to appeal a dismissal or decision under Subsection (1)(a) shall file a notice of appeal with the Utah Court of Appeals within seven days after the dismissal or decision.
- (2) A procurement unit may not appeal the decision of a procurement appeals panel, unless the appeal is:
 - (a) recommended by the protest officer involved; and
 - (b) except for a procurement unit that is not represented by the attorney general's office, approved by the attorney general.
- (3) A person appealing a dismissal, decision, or protest under this section may not base the appeal on a ground not specified in the proceeding from which the appeal is taken.
- (4) The Utah Court of Appeals:
 - (a) shall consider the appeal as an appellate court;
 - (b) may not hear the matter as a trial de novo; and
 - (c) may not overturn a finding, dismissal, or decision unless the finding, dismissal, or decision, is arbitrary and capricious or clearly erroneous.
- (5) The Utah Court of Appeals is encouraged to:
 - (a) give an appeal made under this section priority; and
 - (b) consider the appeal and render a decision in an expeditious manner.

Amended by Chapter 348, 2017 General Session

Part 19
General Provisions Related to Protest or Appeal

63G-6a-1901 Title.

This part is known as "General Provisions Related to Protest or Appeal."

Enacted by Chapter 347, 2012 General Session

63G-6a-1902 Limitation on challenges -- Compliance with federal law.

- (1) A person may not challenge a procurement, a procurement process, the award of a contract relating to a procurement, a debarment, or a suspension, in a court, before an administrative officer or body, or in any other forum other than the forum permitted in this chapter.
- (2) A person who desires to challenge a procurement, a procurement process, the award of a contract relating to a procurement, a debarment, or a suspension, shall bring the challenge, in accordance with the requirements of this chapter.
- (3) In hearing a protest or an appeal under this chapter relating to an expenditure of federal assistance, federal contract funds, or a federal grant, the person who hears the appeal shall ensure compliance with federal law and regulations relating to the expenditure.

Amended by Chapter 196, 2014 General Session

63G-6a-1903 Effect of timely protest or appeal.

A procurement unit, other than a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district, may not proceed further with a solicitation or with the award of a contract:

- (1) during the pendency of a timely:
 - (a) protest under Section 63G-6a-1602;
 - (b) appeal of a protest under Section 63G-6a-1702; or
 - (c) appeal of a procurement appeals panel decision under Section 63G-6a-1802; and
- (2) until:
 - (a) all administrative and judicial remedies are exhausted;
 - (b) for a protest under Section 63G-6a-1602 or an appeal under Section 63G-6a-1702:
 - (i) the chief procurement officer, after consultation with the attorney general's office and the head of the using agency, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state;
 - (ii) the procurement official of an independent procurement unit, after consultation with the procurement unit's attorney, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state; or
 - (iii) for a procurement unit that is not represented by the attorney general's office, the procurement official, after consulting with the attorney for the procurement unit, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state; or
 - (c) for an appeal under Section 63G-6a-1802, or an appeal to a higher court than district court:
 - (i) the chief procurement officer, after consultation with the attorney general's office and the head of the using agency, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state;
 - (ii) the procurement official of an independent procurement unit, after consultation with the procurement unit's attorney, makes a written determination that award of the contract without delay is in the best interest of the procurement unit or the state; or
 - (iii) for a procurement unit that is not represented by the attorney general's office, the procurement official, after consulting with the attorney for the procurement unit, makes a written determination that award of the contract without delay is necessary to protect the best interest of the procurement unit or the state.

Amended by Chapter 257, 2020 General Session

63G-6a-1904 Costs to or against protestor.

- (1) If a protest is sustained administratively or upon administrative or judicial review and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, the protestor is entitled to the following relief as a claim against the procurement unit:
 - (a) the reasonable costs incurred in connection with the solicitation, including bid preparation and appeal costs; and
 - (b) any equitable relief determined to be appropriate by the reviewing administrative or judicial body.
- (2) If the final determination of a procurement appeals panel or other appellate body does not sustain the protest, the protestor shall reimburse the conducting or issuing procurement unit for all expenses that the conducting or issuing procurement unit incurred in defending the appeal, including personnel costs, attorney fees, other legal costs, the per diem and expenses paid by the conducting or issuing procurement unit to witnesses or appeals panel members, and any additional expenses incurred by the staff of the conducting or issuing procurement unit who have provided materials and administrative services to the procurement appeals panel for that case.
- (3) The provisions of Title 63G, Chapter 7, Part 4, Notice of Claim Against a Governmental Entity or a Government Employee, and Section 63G-7-601 do not apply to actions brought under this chapter by an aggrieved party for equitable relief or reasonable costs incurred in preparing or appealing an unsuccessful bid or offer.

Amended by Chapter 218, 2015 General Session

63G-6a-1906 Effect of prior determination by agents of procurement unit.

In any judicial action under Section 63G-6a-1802, determinations by employees, agents, or other persons appointed by the procurement unit shall be final and conclusive only as provided in Sections 63G-6a-1911, 63G-6a-1603, and 63G-6a-1705.

Amended by Chapter 196, 2014 General Session

63G-6a-1907 Effect of violation found after award of contract.

- (1) If after award of a contract it is determined administratively or upon administrative or judicial review that a procurement or award of a contract is in violation of law:
 - (a)
 - (i) if the person awarded the contract did not act fraudulently or in bad faith:
 - (A) the contract may be ratified and affirmed if it is in the best interests of the procurement unit; or
 - (B) the contract may be terminated; and
 - (ii) the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract before the termination, plus a reasonable profit; or
 - (b) if the person awarded the contract acted fraudulently or in bad faith:
 - (i) the contract may be declared null and void; or
 - (ii) the contract may be ratified and affirmed if it is in the best interests of the procurement unit, without prejudice to the procurement unit's rights to any appropriate damages.
- (2) Under no circumstances is a person entitled to consequential damages in relation to a solicitation or award of a contract under this chapter, including consequential damages for lost profits, loss of business opportunities, or damage to reputation.

Amended by Chapter 196, 2014 General Session

63G-6a-1909 Affect of violation found prior to award of contract.

If, before award of a contract, it is determined administratively or upon administrative or judicial review that a procurement or proposed award of a contract is in violation of law, the procurement or proposed award shall be cancelled or revised to comply with the law.

Renumbered and Amended by Chapter 347, 2012 General Session
Amended by Chapter 347, 2012 General Session, (Coordination Clause)

63G-6a-1910 Interest rates.

- (1) In controversies between a procurement unit and a contractor under this chapter, interest on amounts ultimately determined to be due to a contractor or the procurement unit are payable at the rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.
- (2) Unless otherwise specified in a lawful contract between a procurement unit and the person making a bond claim against the procurement unit, the interest rate applicable to the bond claim is the rate described in Subsection 15-1-1(2).
- (3) This section does not apply to public assistance benefits programs.

Amended by Chapter 196, 2014 General Session

63G-6a-1911 Determinations final except when arbitrary and capricious or clearly erroneous.

The determinations required under the following provisions are final and conclusive unless they are arbitrary and capricious or clearly erroneous:

- (1) Section 63G-6a-114;
- (2) Section 63G-6a-115;
- (3) Section 63G-6a-702;
- (4) Section 63G-6a-707;
- (5) Section 63G-6a-803;
- (6) Section 63G-6a-804;
- (7) Section 63G-6a-903;
- (8) Subsection 63G-6a-1204(1) or (2);
- (9) Subsection 63G-6a-1204(5);
- (10) Section 63G-6a-1205; or
- (11) Subsection 63G-6a-1206(5).

Amended by Chapter 257, 2020 General Session

**Part 20
Records**

63G-6a-2001 Title.

This part is known as "Records."

Enacted by Chapter 347, 2012 General Session

63G-6a-2002 Records -- Retention.

- (1) All procurement records shall be retained and disposed of in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.
- (2) Written determinations required by this chapter shall be retained in the appropriate official contract file of:
 - (a) the division;
 - (b) except as provided in Subsection (2)(c), the independent procurement unit; or
 - (c) for a legislative procurement unit or a judicial procurement unit, the person designated by rule made by the rulemaking authority.
- (3) A procurement unit shall keep, and make available to the public, upon request, written records of procurements for which an expenditure of \$100 or more is made, for the longer of:
 - (a) six years;
 - (b) the time otherwise required by law; or
 - (c) the time period provided by rule made by the rulemaking authority.
- (4) The written record described in Subsection (3) shall include:
 - (a) the name of the provider from whom the procurement was made;
 - (b) a description of the procurement item;
 - (c) the date of the procurement; and
 - (d) the expenditure made for the procurement.

Amended by Chapter 257, 2020 General Session

63G-6a-2003 Record of contracts made.

A procurement official shall maintain a record of all contracts made under Section 63G-6a-506, 63G-6a-802, or 63G-6a-803, in accordance with Title 63G, Chapter 2, Government Records Access and Management Act. The record shall contain each contractor's name, the amount and type of each contract, and a listing of the procurement items to which the contract relates.

Amended by Chapter 257, 2020 General Session

63G-6a-2004 Chief procurement officer's collection of information on procurement items.

- (1) To the extent possible, the chief procurement officer may collect information concerning the type, cost, quality, and quantity of commonly used procurement items procured or used by procurement units.
- (2) The chief procurement officer may make the information described in Subsection (1) available to any procurement unit upon request.

Amended by Chapter 445, 2013 General Session

Part 21
Interaction Between Procurement Units

63G-6a-2101 Title.

This part is known as "Interaction Between Procurement Units."

Amended by Chapter 445, 2013 General Session

63G-6a-2102 Agreements between public entities.

A public entity may enter into an agreement with one or more other public entities to:

- (1) sponsor, conduct, or administer a cooperative agreement for:
 - (a) the procurement of a procurement item, in accordance with the requirements of Section 63G-6a-2105; or
 - (b) the disposal of a procurement item;
- (2) cooperatively use a procurement item;
- (3) commonly use or share warehousing facilities, capital equipment, and other facilities;
- (4) provide personnel, if the receiving public entity pays the public entity providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement; or
- (5) purchase from, contribute to, or otherwise participate in a pooled governmental funds program for the purpose of acquiring or sharing information, data, reports, or other services in accordance with the terms of the agreement.

Amended by Chapter 257, 2020 General Session

63G-6a-2103 Purchases between public entities.

- (1)
 - (a)
 - (i) A public entity may purchase a procurement item from another public entity.
 - (ii) Subsection (1)(a)(i) may not be construed to require a public entity to sell a procurement item to another public entity.
 - (b) As provided in Subsection 63G-6a-107.6(1)(a), a purchase under Subsection (1)(a) is not subject to the procurement requirements of this chapter.
 - (c)
 - (i) Subsection (1)(a) does not authorize a public entity to obtain a procurement item under a contract of another public entity.
 - (ii) Subsection (1)(c)(i) does not affect the authority of a procurement unit relating to a cooperative procurement under Subsection 63G-6a-2105(4)(b).
- (2) A public entity may publish a schedule of costs or fees for procurement items available for purchase by another public entity.

Amended by Chapter 257, 2020 General Session

63G-6a-2104 Compliance by one procurement unit pursuant to agreement considered compliance by others to agreement.

- (1) When a procurement unit that administers a cooperative procurement complies with the requirements of this chapter, any procurement unit participating in the purchase is considered to have complied with this chapter.
- (2) A procurement unit may not enter into a cooperative procurement agreement for the purpose of circumventing this chapter.

Amended by Chapter 445, 2013 General Session

63G-6a-2105 Cooperative procurements -- Contracts with federal government -- Regional solicitations.

- (1) The chief procurement officer may, in accordance with the requirements of this chapter, enter into a cooperative procurement, and a contract that is awarded as a result of a cooperative procurement, with:
 - (a) another state;
 - (b) a cooperative purchasing organization; or
 - (c) a public entity inside or outside the state.
- (2) A public entity, nonprofit organization, or, as permitted under federal law, an agency of the federal government, may obtain a procurement item from a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1), without signing a participating addendum if the solicitation issued by the chief procurement officer to obtain the contract includes a statement indicating that the resulting contract will be issued for the benefit of public entities and, as applicable, nonprofit organizations and agencies of the federal government.
- (3) Except as provided in Section 63G-6a-506, or as otherwise provided in this chapter, an executive branch procurement unit may not obtain a procurement item from a source other than a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1), if the procurement item is available under a state cooperative contract or a contract awarded by the chief procurement officer under Subsection (1).
- (4) A Utah procurement unit may:
 - (a) contract with the federal government without going through a standard procurement process or an exception to a standard procurement process, described in Part 8, Exceptions to Procurement Requirements, if the procurement item obtained under the contract is provided:
 - (i) directly by the federal government and not by a person contracting with the federal government; or
 - (ii) by a person under contract with the federal government that obtained the contract in a manner that substantially complies with the provisions of this chapter;
 - (b) participate in, sponsor, conduct, or administer a cooperative procurement with another Utah procurement unit or another public entity in Utah, if:
 - (i) each party unit involved in the cooperative procurement enters into an agreement describing the rights and duties of each party;
 - (ii) the procurement is conducted, and the contract awarded, in accordance with the requirements of this chapter;
 - (iii) the solicitation:
 - (A) clearly indicates that the procurement is a cooperative procurement; and
 - (B) identifies each party that may purchase under the resulting contract; and
 - (iv) each party involved in the cooperative procurement signs a participating addendum describing its rights and obligations in relation to the resulting contract; or
 - (c) purchase under, or otherwise participate in, an agreement or contract of a cooperative purchasing organization, if:
 - (i) each party involved in the cooperative procurement enters into an agreement describing the rights and duties of each party;
 - (ii) the procurement was conducted in accordance with the requirements of this chapter;
 - (iii) the solicitation:
 - (A) clearly indicates that the procurement is a cooperative procurement; and
 - (B) identifies each party that may purchase under the resulting contract; and
 - (iv) each party involved in the cooperative procurement signs a participating addendum describing its rights and obligations in relation to the resulting contract.

- (5) A procurement unit may not obtain a procurement item under a contract that results from a cooperative procurement described in Subsection (4), unless the procurement unit:
 - (a) is identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); and
 - (b) signs a participating addendum to the contract as required by this section.
- (6) A procurement unit, other than a legislative procurement unit or a judicial procurement unit, may not obtain a procurement item under a contract held by the United States General Services Administration, unless, based upon documentation provided by the procurement unit, the Director of the State Division of Purchasing and General Services determines in writing that the United States General Services Administration procured the contract in a manner that substantially complies with the provisions of this chapter.
- (7)
 - (a) As used in this Subsection (7), "regional solicitation" means a solicitation issued by the chief procurement officer for the procurement of a procurement item within a specified geographical region of the state.
 - (b) In addition to any other duty or authority under this section, the chief procurement officer shall:
 - (i) after considering board recommendations, develop a plan for issuing regional solicitations; and
 - (ii) after developing a plan, issue regional solicitations for procurement items in accordance with the plan and this chapter.
 - (c) A plan under Subsection (7)(b) shall:
 - (i) define the proposed regional boundaries for regional solicitations;
 - (ii) specify the types of procurement items for which a regional solicitation may be issued; and
 - (iii) identify the regional solicitations that the chief procurement officer plans to issue.
 - (d) A regional solicitation shall require that a person responding to the solicitation offer similar warranties and submit to similar obligations as are standard under other state cooperative contracts.
 - (e) Except as authorized by the chief procurement officer, a procurement item that is available under a state cooperative contract may not be provided under a contract pursuant to a regional solicitation until after the expiration of the state cooperative contract.

Amended by Chapter 348, 2016 General Session
Amended by Chapter 355, 2016 General Session

Part 24

Unlawful Conduct and Penalties

63G-6a-2401 Title.

This part is known as "Unlawful Conduct and Penalties."

Enacted by Chapter 196, 2014 General Session

63G-6a-2402 Definitions.

As used in this part:

- (1) "Contract administration professional":
 - (a) means an individual who:

- (i) is:
 - (A) directly under contract with a procurement unit; or
 - (B) employed by a person under contract with a procurement unit; and
 - (ii) has responsibility in:
 - (A) developing a solicitation or grant, or conducting the procurement process; or
 - (B) supervising or overseeing the administration or management of a contract or grant; and
 - (b) does not include an employee of the procurement unit.
- (2) "Contribution":
- (a) means a voluntary gift or donation of money, service, or anything else of value, to a public entity for the public entity's use and not for the primary use of an individual employed by the public entity; and
 - (b) includes:
 - (i) a philanthropic donation;
 - (ii) admission to a seminar, vendor fair, charitable event, fundraising event, or similar event that relates to the function of the public entity;
 - (iii) the purchase of a booth or other display space at an event sponsored by the public entity or a group of which the public entity is a member; and
 - (iv) the sponsorship of an event that is organized by the public entity.
- (3) "Family member" means a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.
- (4) "Governing body" means an administrative, advisory, executive, or legislative body of a public entity.
- (5) "Gratuity":
- (a) means anything of value given:
 - (i) without anything provided in exchange; or
 - (ii) in excess of the market value of that which is provided in exchange;
 - (b) includes:
 - (i) a gift or favor;
 - (ii) money;
 - (iii) a loan at an interest rate below the market rate or with terms that are more advantageous to the borrower than terms offered generally on the market;
 - (iv) anything of value provided with an award, other than a certificate, plaque, or trophy;
 - (v) employment;
 - (vi) admission to an event;
 - (vii) a meal, lodging, or travel;
 - (viii) entertainment for which a charge is normally made; and
 - (ix) a raffle, drawing for a prize, or lottery; and
 - (c) does not include:
 - (i) an item, including a meal in association with a training seminar, that is:
 - (A) included in a contract or grant; or
 - (B) provided in the proper performance of a requirement of a contract or grant;
 - (ii) an item requested to evaluate properly the award of a contract or grant;
 - (iii) a rebate, coupon, discount, airline travel award, dividend, or other offering included in the price of a procurement item;
 - (iv) a meal provided by an organization or association, including a professional or educational association, an association of vendors, or an association composed of public agencies or public entities, that does not, as an organization or association, respond to solicitations;

- (v) a product sample submitted to a public entity to assist the public entity to evaluate a solicitation;
 - (vi) a political campaign contribution;
 - (vii) an item generally available to the public; or
 - (viii) anything of value that one public agency provides to another public agency.
- (6) "Hospitality gift":
- (a) means a token gift of minimal value, including a pen, pencil, stationery, toy, pin, trinket, snack, beverage, or appetizer, given for promotional or hospitality purposes; and
 - (b) does not include money, a meal, admission to an event for which a charge is normally made, entertainment for which a charge is normally made, travel, or lodging.
- (7) "Kickback":
- (a) means a negotiated bribe provided in connection with a procurement or the administration of a contract or grant; and
 - (b) does not include anything listed in Subsection (5)(c).
- (8) "Procurement" has the same meaning as defined in Section 63G-6a-103, but also includes the awarding of a grant.
- (9) "Procurement professional":
- (a) means an individual who is an employee, and not an independent contractor, of a procurement unit, and who, by title or primary responsibility:
 - (i) has procurement decision making authority; and
 - (ii) is assigned to be engaged in, or is engaged in:
 - (A) the procurement process; or
 - (B) the process of administering a contract or grant, including enforcing contract or grant compliance, approving contract or grant payments, or approving contract or grant change orders or amendments; and
 - (b) excludes:
 - (i) any individual who, by title or primary responsibility, does not have procurement decision making authority;
 - (ii) an individual holding an elective office;
 - (iii) a member of a governing body;
 - (iv) a chief executive of a public entity or a chief assistant or deputy of the chief executive, if the chief executive, chief assistant, or deputy, respectively, has a variety of duties and responsibilities beyond the management of the procurement process or the contract or grant administration process;
 - (v) the superintendent, business administrator, principal, or vice principal of a school district or charter school, or the chief assistant or deputy of the superintendent, business administrator, principal, or vice principal;
 - (vi) a university or college president, vice president, business administrator, or dean;
 - (vii) a chief executive of a special district, as defined in Section 17B-1-102, a special service district, as defined in Section 17D-1-102, or a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act;
 - (viii) an employee of a public entity with:
 - (A) an annual budget of \$1,000,000 or less; or
 - (B) no more than four full-time employees; and
 - (ix) an executive director or director of an executive branch procurement unit who:
 - (A) by title or primary responsibility, does not have procurement decision making authority; and
 - (B) is not assigned to engage in, and is not engaged in, the procurement process.

- (10) "Public agency" has the same meaning as defined in Section 11-13-103, but also includes all officials, employees, and official representatives of a public agency, as defined in Section 11-13-103.

Amended by Chapter 16, 2023 General Session

63G-6a-2403 Applicability.

- (1) This part applies to each public entity.
- (2) A procurement professional is subject to this part at all times during:
- (a) the procurement process; and
 - (b) the administration of a contract or grant.
- (3) A contract administration professional is subject to this part at all times during the period the contract administration professional is:
- (a) under contract with a procurement unit; and
 - (b) involved in:
 - (i) the procurement process; or
 - (ii) the administration of a contract or grant.
- (4) This part does not apply to:
- (a) an individual described in Subsection 63G-6a-2402(9)(b);
 - (b) any individual other than a procurement professional or contract administration professional; or
 - (c) a taxed interlocal entity, as defined in Section 11-13-602, or a director, officer, or employee of a taxed interlocal entity.
- (5) The other subsections of this section do not affect the applicability or effect of any other ethics, bribery, or other law.

Amended by Chapter 348, 2017 General Session

63G-6a-2404 Unlawful conduct -- Exceptions -- Classification of offenses.

- (1)
- (a) It is unlawful for a person who has or is seeking a contract with or a grant from a public entity knowingly to give, or offer, promise, or pledge to give, a gratuity or kickback to:
 - (i) the public entity;
 - (ii) a procurement professional or contract administration professional; or
 - (iii) an individual who the person knows is a family member of an individual described in Subsection (1)(a)(ii).
 - (b) It is not unlawful for a public agency to give, offer, promise, or pledge to give a contribution to another public agency.
 - (c) A person is not guilty of unlawful conduct under Subsection (1)(a) for:
 - (i) giving or offering, promising, or pledging to give a contribution to a public entity, unless done with the intent to induce the public entity, in exchange, to:
 - (A) award a contract or grant;
 - (B) make a procurement decision; or
 - (C) take an action relating to the administration of a contract or grant; or
 - (ii) giving or offering, promising, or pledging to give something of value to an organization to which a procurement professional or contract administration professional belongs, unless done with the intent to induce a public entity, in exchange, to:
 - (A) award a contract or grant;

- (B) make a procurement decision; or
 - (C) take an action relating to the administration of a contract or grant.
- (2)
- (a) It is unlawful for a procurement professional or contract administration professional, or a family member of either, knowingly to receive or accept, offer or agree to receive or accept, or ask for a promise or pledge of, a gratuity or kickback from a person who has or is seeking a contract with or a grant from a public entity.
 - (b) An individual is not guilty of unlawful conduct under Subsection (2)(a) for receiving or accepting, offering or agreeing to receive or accept, or asking for a promise or pledge of a contribution on behalf of a public entity, unless done with the intent that the public entity, in exchange:
 - (i) award a contract or grant;
 - (ii) make a procurement decision; or
 - (iii) take an action relating to the administration of a contract or grant.
- (3) Notwithstanding Subsections (1) and (2), it is not unlawful for a person to give or receive, offer to give or receive, or promise or pledge to give or ask for a promise or pledge of, a hospitality gift, if:
- (a) the total value of the hospitality gift is less than \$10; and
 - (b) the aggregate value of all hospitality gifts from the person to the recipient in a calendar year is less than \$50.
- (4) A person who engages in the conduct made unlawful under Subsection (1) or (2) is guilty of:
- (a) a second degree felony, if the total value of the gratuity or kickback is \$1,000 or more;
 - (b) a third degree felony, if the total value of the gratuity or kickback is \$250 or more but less than \$1,000;
 - (c) a class A misdemeanor, if the total value of the gratuity or kickback is \$100 or more but less than \$250; and
 - (d) a class B misdemeanor, if the total value of the gratuity or kickback is less than \$100.
- (5) The criminal sanctions described in Subsection (4) do not preclude the imposition of other penalties for conduct made unlawful under this part, in accordance with other applicable law, including:
- (a) dismissal from employment or other disciplinary action;
 - (b) for an elected officer listed in Section 77-6-1, removal from office as provided in Title 77, Chapter 6, Removal by Judicial Proceedings;
 - (c) requiring the public officer or employee to return the value of the unlawful gratuity or kickback; and
 - (d) any other civil penalty provided by law.

Enacted by Chapter 196, 2014 General Session

63G-6a-2404.3 Dividing a procurement to avoid using a standard procurement process.

- (1) It is unlawful for a person knowingly to divide a single procurement into multiple smaller procurements if dividing the single procurement:
- (a) is done with the intent to avoid the use of a standard procurement process that would have otherwise been required if the procurement had not been divided;
 - (b) constitutes unlawful conduct under Subsection 63G-6a-506(8); or
 - (c) is otherwise prohibited by this chapter.
- (2) A violation of Subsection (1) is:

- (a) a second degree felony, if the value of the procurement before being divided is \$1,000,000 or more;
- (b) a third degree felony, if the value of the procurement before being divided is \$250,000 or more but less than \$1,000,000;
- (c) a class A misdemeanor, if the value of the procurement before being divided is \$100,000 or more but less than \$250,000; or
- (d) a class B misdemeanor, if the value of the procurement before being divided is less than \$100,000.

Enacted by Chapter 348, 2017 General Session

63G-6a-2404.7 Improper action against a public officer or employee involved in the procurement process.

- (1)
 - (a) It is unlawful for a person knowingly to threaten to make a false allegation against a public officer or employee, or knowingly to threaten to take a menacing or intimidating action against a public officer or employee, with the intent to:
 - (i) prevent the officer or employee from performing a duty or responsibility that the officer or employee has under this chapter;
 - (ii) influence the officer or employee to award a contract under this chapter to the person or take other action under this chapter in favor of the person; or
 - (iii) retaliate against the officer or employee for:
 - (A) not awarding a contract under this chapter to the person;
 - (B) issuing a decision or taking an action under this chapter that is adverse to the person; or
 - (C) performing a duty or responsibility the officer or employee has under this chapter.
 - (b) A violation of Subsection (1)(a) is a class A misdemeanor.
- (2)
 - (a) It is unlawful for a person knowingly to make a false allegation against a public officer or employee, or knowingly to take a menacing or intimidating action against a public officer or employee, with the intent to:
 - (i) prevent the officer or employee from performing a duty or responsibility that the officer or employee has under this chapter;
 - (ii) influence the officer or employee to award a contract under this chapter to the person or take other action under this chapter in favor of the person; or
 - (iii) retaliate against the officer or employee for:
 - (A) not awarding a contract under this chapter to the person;
 - (B) issuing a decision or taking an action under this chapter that is adverse to the person; or
 - (C) performing a duty or responsibility the officer or employee has under this chapter.
 - (b) A violation of Subsection (2)(a) is a third degree felony.

Enacted by Chapter 348, 2017 General Session

63G-6a-2405 Discretion to declare contract or grant void -- Limitations.

- (1) Subject to Subsection (2), the governing body or chief executive officer of a public entity that awards a contract or grant to a person who engages in conduct made unlawful under this part may, in the sole discretion of the governing body or chief executive officer, declare the contract or grant to be void and unenforceable, unless:

- (a) the contract or grant relates to the issuance of a bond or other obligation and the bond has been issued or obligation incurred; or
 - (b) a third party has substantially changed its position in reliance upon the contract or grant.
- (2) Declaring a contract or grant void under Subsection (1) does not affect the obligation of a procurement unit to pay for a contractor's proper performance completed under the contract or grant or the value the contractor provides to the public entity under the contract or grant before the contract or grant is declared void.
- (3) Subsection (1) applies only to a procurement with respect to which:
- (a) public notice is provided on or after July 1, 2014, if public notice of the procurement is required; or
 - (b) the initial contact between the public entity and the potential contractor, for purposes of the procurement, occurs on or after July 1, 2014, if public notice of the procurement is not required.

Enacted by Chapter 196, 2014 General Session

63G-6a-2406 Authority of conducting procurement unit with respect to evaluation committee.

Nothing in this part restricts a conducting procurement unit from:

- (1) requiring an evaluation committee member to disclose a conflict of interest; or
- (2) removing an evaluation committee member for having a conflict of interest.

Enacted by Chapter 196, 2014 General Session

63G-6a-2407 Duty to report unlawful conduct.

- (1) As used in this section, "unlawful conduct" means:
- (a) conduct made unlawful under this part; or
 - (b) conduct, including bid rigging, improperly steering a contract to a favored vendor, exercising undue influence on an individual involved in the procurement process, or participating in collusion or other anticompetitive practices, made unlawful under other applicable law.
- (2)
- (a) A procurement professional with actual knowledge that a person has engaged in unlawful conduct shall report the person's unlawful conduct to:
 - (i) the state auditor; or
 - (ii) the attorney general or other appropriate prosecuting attorney.
 - (b) An individual not subject to the requirement of Subsection (2)(a) who has actual knowledge that a person has engaged in unlawful conduct may report the person's unlawful conduct to:
 - (i) the state auditor; or
 - (ii) the attorney general or other appropriate prosecuting attorney.
- (3) A procurement professional who fails to comply with the requirement of Subsection (2)(a) is subject to any applicable disciplinary action.

Amended by Chapter 348, 2017 General Session

Part 25
Human Services Procurements

63G-6a-2501 Definitions.

As used in this part:

- (1) "Department" means the Department of Health and Human Services.
- (2) "Executive director" means the executive director of the department.

Enacted by Chapter 291, 2024 General Session

63G-6a-2502 Procurement advisory council -- Appointment.

The executive director may appoint an advisory council to advise and make recommendations to the department on the procurement of a human services procurement item, including recommendations regarding persons to be debarred or suspended under Section 63G-6a-2504.

Enacted by Chapter 291, 2024 General Session

63G-6a-2503 Direct purchase procurement process requirements -- Payment information on website.

- (1) The department may, without issuing a solicitation, directly purchase from, or contract with, another person for the following human services procurement items:
 - (a) medical, dental, behavioral, psychological, psychiatric, or substance use evaluation and treatment for an individual;
 - (b) assistance payments on behalf of an individual that are intended to keep the individual out of a higher level of care or prevent or reduce the need for additional department services;
 - (c) services for which the individual receiving the services has the right to choose the person who provides the services;
 - (d) services for which the department makes a written determination, made available to the public, that the individual's need to receive services from a particular provider outweigh the public interest in issuing a competitive procurement;
 - (e) adoption subsidy and maintenance payments;
 - (f) child placing services for an individual adoption;
 - (g) death investigation services; or
 - (h) residential treatment services for an individual after all providers under contract from a competitive procurement are exhausted.
- (2) The department shall:
 - (a) maintain a written record of the name of all persons who provide services under this section; and
 - (b) annually publish on the department's website the total amount paid to each person under this section during the immediately preceding five-year period.

Enacted by Chapter 291, 2024 General Session

63G-6a-2504 Process for an invitation to provide a human services procurement item -- Open-ended invitations.

- (1) As used in this section:
 - (a) "Invitation" means a solicitation or other request seeking qualified providers to enter a contract to provide a human services procurement item.
 - (b) "Open-ended invitation" means an invitation that does not provide for a set closing date.

- (c) "Qualified provider" means a provider of a human services procurement item that meets the qualifications described in the invitation.
- (2) The department may contract with another person for a human services procurement item in accordance with the process described in this section.
- (3)
 - (a) The department may issue an invitation that includes:
 - (i) a description of the human services procurement item the department is seeking to obtain;
 - (ii)
 - (A) the time period for which the invitation will remain open for applications; or
 - (B) if the invitation is an open-ended invitation, a statement that there is no set closing date for the invitation;
 - (iii) the requirements the department has established for the submission of an application;
 - (iv) the payment rate or a description of the process for determining the payment rate for the human services procurement item;
 - (v) the qualifications a provider is required to meet to be awarded a contract for the human services procurement item; and
 - (vi) the required terms and conditions of a contract if awarded.
 - (b) The department shall publish the invitation in accordance with the notice requirements for a solicitation described in Section 63G-6a-2506.
 - (c) The department may:
 - (i) provide for an indeterminate or specified time period for a provider to respond to the invitation;
 - (ii) close an invitation if the need for additional providers for a human services procurement item no longer exists; or
 - (iii) reissue an invitation after closing the invitation.
 - (d) The department may provide technical application assistance to a person applying in response to an invitation.
- (4)
 - (a) Upon receipt of an application submitted in response to an invitation, the department shall:
 - (i) review the application to determine:
 - (A) the application's compliance with the requirements referred to in Subsection (3)(a)(iii); and
 - (B) whether the person that submitted the application meets the qualifications referred to in Subsection (3)(a)(v);
 - (ii) award a contract to a person:
 - (A) whose application complies with the requirements referred to in Subsection (3)(a)(iii); and
 - (B) that meets the qualifications referred to in Subsection (3)(a)(v); and
 - (iii) reject an application if:
 - (A) the application does not comply with the requirements referred to in Subsection (3)(a)(iii);
 - or
 - (B) the person that submitted the application does not meet the qualifications referred to in Subsection (3)(a)(v).
 - (b) If the department closes an invitation, the department may reject an application submitted before the invitation is closed.
 - (c) The department may allow a person to correct deficiencies in an application during the department's review of the application under Subsection (4)(a).
- (5) If a person's application is rejected under Subsection (4):
 - (a) the department shall notify the person of the rejection in writing; and

- (b) the person may not reapply to the same invitation for at least 12 months after the day on which the rejection is issued.
- (6)
 - (a) The department may award a perpetual contract under this section if the contract is awarded pursuant to an open-ended invitation.
 - (b) Subsection (6)(a) does not prevent the department from terminating a perpetual contract, under terms established in the contract, if the open-ended invitation terminates.
- (7) The department may make rules to establish procedures to ensure the open enrollment invitation process described in this section is administered in an open and fair manner that provides any interested, qualified provider the ability to be awarded a contract.

Enacted by Chapter 291, 2024 General Session

63G-6a-2505 Debarment or suspension from consideration for award of contracts.

- (1) The executive director may:
 - (a) debar or suspend a person from consideration for an award of a contract for a human services procurement item for any amount of time in accordance with the process described in Subsection 63G-6a-904(1); and
 - (b) obtain the recommendation of the council before debarring or suspending the person.
- (2) The council shall recommend that the executive director debar or suspend a person for an award of a contract for a human services procurement item if the person:
 - (a) is convicted of a criminal offense:
 - (i) for actions taken to obtain or perform under a public or private contract;
 - (ii) for embezzlement, fraud, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property; or
 - (iii) under Title 76, Chapter 10, Part 31, Utah Antitrust Act, or another antitrust law;
 - (b) fails, without good cause, to perform in accordance with the terms of a contract with the department;
 - (c) commits two or more violations of department rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (d) violates this chapter;
 - (e) poses a significant risk of harm to department clients or the department;
 - (f) is barred or suspended from providing services to another governmental agency; or
 - (g) takes another action that the council determines is fraudulent or substantially affects the person's ability to perform under a contract with the department for a human services procurement item.

Enacted by Chapter 291, 2024 General Session

63G-6a-2506 Public notice requirements.

- (1) The department may post notice of a solicitation in accordance with Subsection 63G-6a-112(1) at least three days before the day of the deadline for submission of a solicitation response.
- (2) The department may reduce the three-day period described in Subsection (1) in accordance with Subsection 63G-6a-112(2).

Enacted by Chapter 291, 2024 General Session

63G-6a-2507 Human services procurement appeals process.

- (1) A protester may appeal a protest decision to the department in the same manner a protest may be appealed to the board under Part 17, Procurement Appeals Board.
- (2) In conducting an appeal under Subsection (1), the executive director has the same powers and authority as the chair of the board and the appointing officer in an appeal conducted under Part 17, Procurement Appeals Board, including the power to appoint a procurement appeals panel to conduct a review of a claim in the appeal.

Enacted by Chapter 291, 2024 General Session

Effective 7/1/2024

Chapter 6b State Grants

Effective 7/1/2024

Part 1 General Provisions

Effective 7/1/2024

63G-6b-101 Definitions.

As use in this chapter:

- (1) "Administering agency" means a state agency that administers a grant.
- (2) "Competitive grant" means a grant that is not a direct award grant.
- (3) "Direct award grant" means a grant that is funded by money that the Legislature intends the state agency to pass through to one or more recipients without a competitive process.
- (4)
 - (a) "Grant" means a state agency's expenditure of state money, or agreement to expend state money, that is:
 - (i) authorized by law;
 - (ii) made for a particular purpose; and
 - (iii) made without acquiring, or the promise of acquiring, a procurement item in exchange for the expenditure.
 - (b) "Grant" does not include:
 - (i) a tax credit;
 - (ii) an expenditure of federal money;
 - (iii) public assistance, as defined in Section 26B-9-101;
 - (iv) a loan;
 - (v) a rebate;
 - (vi) an incentive; or
 - (vii) a claim payment.
- (5) "Grant appropriation" means an appropriation the Legislature makes to an administering agency to be used for one or more grants.
- (6) "Grant period" means the time frame during which a grant recipient receives funds from a single grant.
- (7) "Multi-year grant" means a grant for which the grant period exceeds one year.
- (8) "Nonprofit entity" means an entity that:

- (a) operates in the state;
 - (b) is not a government entity; and
 - (c) is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code.
- (9) "Procurement item" means the same as that term is defined in Section 63G-6a-103.
- (10)
- (a) "State agency" means a department, division, or other agency or instrumentality of the state.
 - (b) "State agency" does not include the legislative department.
- (11) "State money" means money that is derived from state fees or state tax revenue.

Enacted by Chapter 300, 2024 General Session

Effective 7/1/2024

63G-6b-102 Applicability.

This chapter does not apply to a grant that is authorized in statute, unless the statute provides that the grant is subject to this chapter.

Enacted by Chapter 300, 2024 General Session

Effective 7/1/2024

**Part 2
Provisions Applicable to All Grants**

Effective 7/1/2024

63G-6b-201 Requirements for all grants.

- (1)
- (a) An administering agency shall disburse grant funds in accordance with this Subsection (1).
 - (b) Before an administering agency disburses a grant's grant funds, the administering agency shall ensure that the grant recipient provides a detailed budget demonstrating how the grant recipient will use the grant funds.
 - (c) An administering agency shall establish a distribution schedule that ensures accountability and responsible oversight of the use of the grant funds.
 - (d) An administering agency may not:
 - (i) disburse all grant funds in a single payment, unless the administering agency makes the single payment after the grant recipient satisfies the grant recipient's performance obligations under the agreement described in Subsection (4); or
 - (ii) make a grant recipient's final disbursement before the grant recipient delivers the report described in Subsection (3).
- (2) For a multi-year grant:
- (a) the grant period may not exceed five years; and
 - (b) in the final quarter of each year of the grant period, excluding the final year, the grant recipient shall deliver to the administering agency a report that details the grant recipient's progress towards fulfilling the grant's purpose, including the annual deliverables and performance metrics described in the agreement made in accordance with Subsection (4).
- (3) An administering agency may not make the final grant funds disbursement until:
- (a) the grant recipient delivers to the administering agency a final report that details the extent to which the grant recipient fulfilled the grant's purpose, including the deliverables and

- performance metrics described in the agreement made in accordance with Subsection (4);
and
- (b) the administering agency determines that the grant recipient satisfactorily produced each deliverable provided in the agreement described in Subsection (4).
- (4) Except as otherwise provided in the grant appropriation and consistent with the other provisions of this section, an administering agency may not disburse grant funds to a grant recipient before the administering agency and the grant recipient execute an agreement that contains:
 - (a) the disbursement schedule for the grant funds;
 - (b) the deliverables, reporting, and performance metrics the grant recipient will produce and use to demonstrate that the grant recipient used the grant funds to fulfill the grant's purpose;
 - (c) if the grant is a multi-year grant, annual deliverables and performance metrics the grant recipient will produce and use to demonstrate sufficient progress towards fulfilling the grant's purpose;
 - (d) a provision informing the grant recipient that disbursement of grant funds is subject to legislative appropriation; and
 - (e) the grant recipient's consent to follow-up audit and clawback of the grant funds if an audit shows that the grant funds were inappropriately used.
- (5) In accordance with Utah Constitution, Article VI, Section 33, the legislative auditor general may audit the use of any grant funds.

Enacted by Chapter 300, 2024 General Session

Effective 7/1/2024

Part 3 Direct Award Grants

Effective 7/1/2024

63G-6b-301 Direct award grant requirements.

- (1)
 - (a) A direct award grant is valid only if the direct award grant's grant appropriation identifies the recipient or class of recipients in the grant appropriation's intent language.
 - (b) For a grant appropriation that is an ongoing appropriation to fund a multi-year grant, the requirement to identify the recipient or class of recipients applies each fiscal year.
- (2) If the intent language for a direct award grant's grant appropriation provides a disbursement schedule that is inconsistent with the schedule described in Section 63G-6b-202, for the fiscal year in which the grant appropriation is made, the schedule in the intent language controls.

Enacted by Chapter 300, 2024 General Session

Effective 7/1/2024

Part 4 Competitive Grants

Effective 7/1/2024

63G-6b-401 Competitive grant requirements.

- (1)
 - (a) For a competitive grant, the administering agency shall:
 - (i) establish a competitive application and selection process; and
 - (ii) award each competitive grant in accordance with the established process.
 - (b) As part of the competitive application process, the administering agency shall require that each applicant disclose all other state funding the applicant receives.
- (2) Except as otherwise provided in the grant appropriation's intent language, an administering agency may not award a competitive grant to a recipient who has received a direct award grant if:
 - (a) the direct award grant is for substantially the same purpose as the competitive grant; and
 - (b) the direct award grant's grant period and the competitive grant's grant period overlap.
- (3) After an administering agency completes a competitive application process for a competitive grant but before the administering agency awards the grant, the administering agency shall report each grant recipient to the legislative fiscal analyst and the Governor's Office of Planning and Budget.

Enacted by Chapter 300, 2024 General Session

Chapter 7 Governmental Immunity Act of Utah

Part 1 General Provisions

63G-7-101 Title -- Scope of waivers and retentions of immunity.

- (1) This chapter is known as the "Governmental Immunity Act of Utah."
- (2) The scope of the waivers and retentions of immunity found in this comprehensive chapter:
 - (a) applies to all functions of government, no matter how labeled; and
 - (b) governs all claims against governmental entities or against their employees or agents arising out of the performance of the employee's duties, within the scope of employment, or under color of authority.
- (3) A governmental entity and an employee of a governmental entity retain immunity from suit unless that immunity has been expressly waived in this chapter.
- (4) A governmental entity and an employee of a governmental entity retain immunity from suit if an injury arises out of or in connection with, or results from, conduct or a condition described in Subsection 63G-7-201(3) or (4), even if immunity from suit for the injury is waived under Section 63G-7-301.

Amended by Chapter 300, 2017 General Session

63G-7-102 Definitions.

As used in this chapter:

- (1) "Arises out of or in connection with, or results from," when used to describe the relationship between conduct or a condition and an injury, means that:
 - (a) there is some causal relationship between the conduct or condition and the injury;

- (b) the causal relationship is more than any causal connection but less than proximate cause; and
 - (c) the causal relationship is sufficient to conclude that the injury originates with, flows from, or is incident to the conduct or condition.
- (2) "Claim" means any asserted demand for or cause of action for money or damages, whether arising under the common law, under state constitutional provisions, or under state statutes, against a governmental entity or against an employee in the employee's personal capacity.
- (3)
- (a) "Employee" includes:
 - (i) a governmental entity's officers, employees, servants, trustees, or commissioners;
 - (ii) a member of a governing body;
 - (iii) a member of a government entity board;
 - (iv) a member of a government entity commission;
 - (v) members of an advisory body, officers, and employees of a Children's Justice Center created in accordance with Section 67-5b-102;
 - (vi) a student holding a license issued by the State Board of Education;
 - (vii) an educational aide;
 - (viii) a student engaged in an internship under Section 53B-16-402 or 53G-7-902;
 - (ix) a volunteer, as defined in Section 67-20-2; and
 - (x) a tutor.
 - (b) "Employee" includes all of the positions identified in Subsection (3)(a), whether or not the individual holding that position receives compensation.
 - (c) "Employee" does not include an independent contractor.
- (4) "Governmental entity" means:
- (a) the state and its political subdivisions; and
 - (b) a law enforcement agency, as defined in Section 53-1-102, that employs one or more law enforcement officers, as defined in Section 53-13-103.
- (5)
- (a) "Governmental function" means each activity, undertaking, or operation of a governmental entity.
 - (b) "Governmental function" includes each activity, undertaking, or operation performed by a department, agency, employee, agent, or officer of a governmental entity.
 - (c) "Governmental function" includes a governmental entity's failure to act.
- (6) "Injury" means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to the person or estate, that would be actionable if inflicted by a private person or the private person's agent.
- (7) "Personal injury" means an injury of any kind other than property damage.
- (8) "Political subdivision" means any county, city, town, school district, community reinvestment agency, special improvement or taxing district, special district, special service district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, or other governmental subdivision or public corporation.
- (9) "Property damage" means injury to, or loss of, any right, title, estate, or interest in real or personal property.
- (10) "State" means the state of Utah, and includes each office, department, division, agency, authority, commission, board, institution, hospital, college, university, Children's Justice Center, or other instrumentality of the state.

- (11) "Willful misconduct" means the intentional doing of a wrongful act, or the wrongful failure to act, without just cause or excuse, where the actor is aware that the actor's conduct will probably result in injury.

Amended by Chapter 16, 2023 General Session

Part 2

Governmental Immunity - Statement, Scope, and Effect

63G-7-201 Immunity of governmental entities and employees from suit.

- (1) Except as otherwise provided in this chapter, each governmental entity and each employee of a governmental entity are immune from suit for any injury that results from the exercise of a governmental function.
- (2) Notwithstanding the waiver of immunity provisions of Section 63G-7-301, a governmental entity, its officers, and its employees are immune from suit:
- (a) as provided in Section 78B-4-517; and
 - (b) for any injury or damage resulting from the implementation of or the failure to implement measures to:
 - (i) control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;
 - (ii) investigate and control suspected bioterrorism and disease as set out in Sections 26B-7-316 through 26B-7-324;
 - (iii) respond to a national, state, or local emergency, a public health emergency as defined in Section 26B-7-301, or a declaration by the President of the United States or other federal official requesting public health related activities, including the use, provision, operation, and management of:
 - (A) an emergency shelter;
 - (B) housing;
 - (C) a staging place; or
 - (D) a medical facility; and
 - (iv) adopt methods or measures, in accordance with Section 26B-1-202, for health care providers, public health entities, and health care insurers to coordinate among themselves to verify the identity of the individuals they serve.
- (3)
- (a) A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury if the injury arises out of or in connection with, or results from:
 - (i) a latent dangerous or latent defective condition of:
 - (A) any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, or viaduct; or
 - (B) another structure located on any of the items listed in Subsection (3)(a)(i); or
 - (ii) a latent dangerous or latent defective condition of any public building, structure, dam, reservoir, or other public improvement.
 - (b)
 - (i) As used in this Subsection (3)(b):
 - (A) "Contaminated land" means the same as that term is defined in Section 11-58-102.

- (B) "Contamination" means the condition of land that results from the placement, disposal, or release of hazardous matter on, in, or under the land, including any seeping or escaping of the hazardous matter from the land.
- (C) "Damage" means any property damage, personal injury, or other injury or any loss of any kind, however denominated.
- (D) "Environmentally compliant" means, as applicable, obtaining a certificate of completion from the Department of Environmental Quality under Section 19-8-111 following participation in a voluntary cleanup under Title 19, Chapter 8, Voluntary Cleanup Program, obtaining an administrative letter from the Department of Environmental Quality for a discrete phase of a voluntary cleanup that is conducted under a remedial action plan as defined in Section 11-58-605, or complying with the terms of an environmental covenant, as defined in Section 57-25-102, signed by an agency, as defined in Section 57-25-102, and duly recorded in the office of the recorder of the county in which the contaminated land is located.
- (E) "Government owner" means a governmental entity, including an independent entity, as defined in Section 63E-1-102, that acquires an ownership interest in land that was contaminated land before the governmental entity or independent entity acquired an ownership interest in the land.
- (F) "Hazardous matter" means hazardous materials, as defined in Section 19-6-302, hazardous substances, as defined in Section 19-6-302, or landfill material, as defined in Section 11-58-102.
- (G) "Remediation" means the same as that term is defined in Section 11-58-102.
- (ii)
- (A) A government owner and the government owner's officers and employees are immune from suit, and immunity is not waived, for any claim for damage that arises out of or in connection with, or results from, contamination of contaminated land.
- (B) A government owner's ownership of contaminated land may not be the basis of a claim against the government owner for damage that arises out of or in connection with, or results from, contamination of contaminated land.
- (iii) Subsection (3)(b)(ii) does not limit or affect:
- (A) the liability of a person that placed, disposed of, or released hazardous matter on, in, or under the land; or
- (B) a worker compensation claim of an employee of an entity that conducts work on or related to contaminated land.
- (iv) Immunity under Subsection (3)(b)(ii)(A) is not affected by a government owner's remediation of contaminated land if the government owner is environmentally compliant.
- (4) A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment, if the injury arises out of or in connection with, or results from:
- (a) the exercise or performance, or the failure to exercise or perform, a discretionary function, whether or not the discretion is abused;
- (b) except as provided in Subsections 63G-7-301(2)(j), (3), and (4), assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or violation of civil rights;
- (c) the issuance, denial, suspension, or revocation of, or the failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization;

- (d) a failure to make an inspection or making an inadequate or negligent inspection;
- (e) the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;
- (f) a misrepresentation by an employee whether or not the misrepresentation is negligent or intentional;
- (g) a riot, unlawful assembly, public demonstration, mob violence, or civil disturbance;
- (h) the collection or assessment of taxes;
- (i) an activity of the Utah National Guard;
- (j) the incarceration of a person in a state prison, county or city jail, or other place of legal confinement;
- (k) a natural condition on publicly owned or controlled land;
- (l) a condition existing in connection with an abandoned mine or mining operation;
- (m) an activity authorized by the School and Institutional Trust Lands Administration or the Division of Forestry, Fire, and State Lands;
- (n) the operation or existence of a trail that is along a water facility, as defined in Section 73-1-8, stream, or river, regardless of ownership or operation of the water facility, stream, or river, if:
 - (i) the trail is designated under a general plan adopted by a municipality under Section 10-9a-401 or by a county under Section 17-27a-401;
 - (ii) the trail right-of-way or the right-of-way where the trail is located is open to public use as evidenced by a written agreement between:
 - (A) the owner or operator of the trail right-of-way or of the right-of-way where the trail is located; and
 - (B) the municipality or county where the trail is located; and
 - (iii) the written agreement:
 - (A) contains a plan for operation and maintenance of the trail; and
 - (B) provides that an owner or operator of the trail right-of-way or of the right-of-way where the trail is located has, at a minimum, the same level of immunity from suit as the governmental entity in connection with or resulting from the use of the trail;
- (o) research or implementation of cloud management or seeding for the clearing of fog;
- (p) the management of flood waters, earthquakes, or natural disasters;
- (q) the construction, repair, or operation of flood or storm systems;
- (r) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6a-212;
- (s) the activity of:
 - (i) providing emergency medical assistance;
 - (ii) fighting fire;
 - (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
 - (iv) an emergency evacuation;
 - (v) transporting or removing an injured person to a place where emergency medical assistance can be rendered or where the person can be transported by a licensed ambulance service;
or
 - (vi) intervening during a dam emergency;
- (t) the exercise or performance, or the failure to exercise or perform, any function pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
- (u) an unauthorized access to government records, data, or electronic information systems by any person or entity;
- (v) an activity of wildlife, as defined in Section 23A-1-101, that arises during the use of a public or private road;

- (w) a communication between employees of one or more law enforcement agencies related to the employment, disciplinary history, character, professional competence, or physical or mental health of a peace officer, or a former, current, or prospective employee of a law enforcement agency, including any communication made in accordance with Section 53-14-103; or
- (x) providing or failing to provide information under Section 53-27-102 or Subsection 41-1a-213(6), (7), or (8), 53-3-207(4), or 53-3-805(5).

Amended by Chapter 34, 2023 General Session
Amended by Chapter 105, 2023 General Session
Amended by Chapter 259, 2023 General Session
Amended by Chapter 329, 2023 General Session
Amended by Chapter 452, 2023 General Session
Amended by Chapter 456, 2023 General Session

63G-7-202 Act provisions not construed as admission or denial of liability -- Effect of waiver of immunity -- Exclusive remedy -- Joinder of employee -- Limitations on personal liability -- Public duty does not create specific duty.

- (1)
 - (a) Nothing contained in this chapter, unless specifically provided, may be construed as an admission or denial of liability or responsibility by or for a governmental entity or its employees.
 - (b) If immunity from suit is waived by this chapter, consent to be sued is granted, and liability of the entity shall be determined as if the entity were a private person.
 - (c) No cause of action or basis of liability is created by any waiver of immunity in this chapter, nor may any provision of this chapter be construed as imposing strict liability or absolute liability.
- (2) Nothing in this chapter may be construed as adversely affecting any immunity from suit that a governmental entity or employee may otherwise assert under state or federal law.
- (3)
 - (a) Except as provided in Subsection (3)(c), an action under this chapter against a governmental entity for an injury caused by an act or omission that occurs during the performance of an employee's duties, within the scope of employment, or under color of authority is a plaintiff's exclusive remedy.
 - (b) Judgment under this chapter against a governmental entity is a complete bar to any action by the claimant, based upon the same subject matter, against the employee whose act or omission gave rise to the claim.
 - (c) A plaintiff may not bring or pursue any civil action or proceeding based upon the same subject matter against the employee or the estate of the employee whose act or omission gave rise to the claim, unless:
 - (i) the employee acted or failed to act through fraud or willful misconduct;
 - (ii) the injury or damage resulted from the employee driving a vehicle, or being in actual physical control of a vehicle:
 - (A) with a blood alcohol content equal to or greater by weight than the established legal limit;
 - (B) while under the influence of alcohol or any drug to a degree that rendered the person incapable of safely driving the vehicle; or
 - (C) while under the combined influence of alcohol and any drug to a degree that rendered the person incapable of safely driving the vehicle;

- (iii) injury or damage resulted from the employee being physically or mentally impaired so as to be unable to reasonably perform the employee's job function because of:
 - (A) the use of alcohol;
 - (B) the nonprescribed use of a controlled substance as defined in Section 58-37-4; or
 - (C) the combined influence of alcohol and a nonprescribed controlled substance as defined by Section 58-37-4;
- (iv) in a judicial or administrative proceeding, the employee intentionally or knowingly gave, upon a lawful oath or in any form allowed by law as a substitute for an oath, false testimony material to the issue or matter of inquiry under this section; or
- (v) the employee intentionally or knowingly:
 - (A) fabricated evidence; or
 - (B) except as provided in Subsection (3)(d), with a conscious disregard for the rights of others, failed to disclose evidence that:
 - (I) was known to the employee; and
 - (II)
 - (Aa) was known by the employee to be relevant to a material issue or matter of inquiry in a pending judicial or administrative proceeding, if the employee knew of the pending judicial or administrative proceeding; or
 - (Bb) was known by the employee to be relevant to a material issue or matter of inquiry in a judicial or administrative proceeding, if disclosure of the evidence was requested of the employee by a party to the proceeding or counsel for a party to the proceeding.
- (d) The exception, described in Subsection (3)(c)(v)(B), allowing a plaintiff to bring or pursue a civil action or proceeding against an employee, does not apply if the employee failed to disclose evidence described in Subsection (3)(c)(v)(B), because the employee is prohibited by law from disclosing the evidence.
- (4) Except as permitted in Subsection (3)(c), no employee may be joined or held personally liable for acts or omissions occurring:
 - (a) during the performance of the employee's duties;
 - (b) within the scope of employment; or
 - (c) under color of authority.
- (5) A general duty that a governmental entity owes to the public does not create a specific duty to an individual member of the public, unless there is a special relationship between the governmental entity and the individual member of the public.

Amended by Chapter 415, 2014 General Session

63G-7-203 Exemptions for certain actions.

The requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, and 63G-7-601 do not apply to:

- (1) an action that involves takings law, as defined in Section 63L-3-102; or
- (2) an action filed under Title 67, Chapter 21, Utah Protection of Public Employees Act.

Amended by Chapter 178, 2018 General Session

**Part 3
Waivers of Immunity**

Superseded 7/1/2024**63G-7-301 Waivers of immunity.**

- (1)
- (a) Immunity from suit of each governmental entity is waived as to any contractual obligation.
 - (b) Actions arising out of contractual rights or obligations are not subject to the requirements of Section 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.
 - (c) The Division of Water Resources is not liable for failure to deliver water from a reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development Act, if the failure to deliver the contractual amount of water is due to drought, other natural condition, or safety condition that causes a deficiency in the amount of available water.
- (2) Immunity from suit of each governmental entity is waived:
- (a) as to any action brought to recover, obtain possession of, or quiet title to real or personal property;
 - (b) as to any action brought to foreclose mortgages or other liens on real or personal property, to determine any adverse claim on real or personal property, or to obtain an adjudication about any mortgage or other lien that the governmental entity may have or claim on real or personal property;
 - (c) as to any action based on the negligent destruction, damage, or loss of goods, merchandise, or other property while it is in the possession of any governmental entity or employee, if the property was seized for the purpose of forfeiture under any provision of state law;
 - (d) subject to Section 63G-7-302, as to any action brought under the authority of Utah Constitution, Article I, Section 22, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation;
 - (e) as to any claim for attorney fees or costs under Section 63G-2-209, 63G-2-405, or 63G-2-802;
 - (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees Act;
 - (g) as to any action brought to obtain relief from a land use regulation that imposes a substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious Land Use Act;
 - (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:
 - (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or
 - (ii) any defective or dangerous condition of a public building, structure, dam, reservoir, or other public improvement;
 - (i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment;
 - (j) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from a sexual battery, as provided in Section 76-9-702.1, committed:
 - (i) against a student of a public elementary or secondary school, including a charter school; and
 - (ii) by an employee of a public elementary or secondary school or charter school who:
 - (A) at the time of the sexual battery, held a position of special trust, as defined in Section 76-5-404.1, with respect to the student;
 - (B) is criminally charged in connection with the sexual battery; and
 - (C) the public elementary or secondary school or charter school knew or in the exercise of reasonable care should have known, at the time of the employee's hiring, to be a sex offender, as defined in Section 77-41-102, required to register under Title 77, Chapter

41, Sex and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a background check under Section 53G-11-402;

(k) as to any action brought under Section 78B-6-2303; and

(l) as to any action brought to obtain relief under Title 53B, Chapter 27, Part 6, Student Legal Representation.

(3)

(a) As used in this Subsection (3):

(i) "Code of conduct" means a code of conduct that:

(A) is not less stringent than a model code of conduct, created by the State Board of Education, establishing a professional standard of care for preventing the conduct described in Subsection (3)(a)(i)(D);

(B) is adopted by the applicable local education governing body;

(C) regulates behavior of a school employee toward a student; and

(D) includes a prohibition against any sexual conduct between an employee and a student and against the employee and student sharing any sexually explicit or lewd communication, image, or photograph.

(ii) "Local education agency" means:

(A) a school district;

(B) a charter school; or

(C) the Utah Schools for the Deaf and the Blind.

(iii) "Local education governing board" means:

(A) for a school district, the local school board;

(B) for a charter school, the charter school governing board; or

(C) for the Utah Schools for the Deaf and the Blind, the state board.

(iv) "Public school" means a public elementary or secondary school.

(v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).

(vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering the term "child" in that section to include an individual under age 18.

(b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim against a local education agency for an injury resulting from a sexual battery or sexual abuse committed against a student of a public school by a paid employee of the public school who is criminally charged in connection with the sexual battery or sexual abuse, unless:

(i) at the time of the sexual battery or sexual abuse, the public school was subject to a code of conduct; and

(ii) before the sexual battery or sexual abuse occurred, the public school had:

(A) provided training on the code of conduct to the employee; and

(B) required the employee to sign a statement acknowledging that the employee has read and understands the code of conduct.

(4)

(a) As used in this Subsection (4):

(i) "Higher education institution" means an institution included within the state system of higher education under Section 53B-1-102.

(ii) "Policy governing behavior" means a policy adopted by a higher education institution or the Utah Board of Higher Education that:

(A) establishes a professional standard of care for preventing the conduct described in Subsections (4)(a)(ii)(C) and (D);

(B) regulates behavior of a special trust employee toward a subordinate student;

- (C) includes a prohibition against any sexual conduct between a special trust employee and a subordinate student; and
- (D) includes a prohibition against a special trust employee and subordinate student sharing any sexually explicit or lewd communication, image, or photograph.
- (iii) "Sexual battery" means the offense described in Section 76-9-702.1.
- (iv) "Special trust employee" means an employee of a higher education institution who is in a position of special trust, as defined in Section 76-5-404.1, with a higher education student.
- (v) "Subordinate student" means a student:
 - (A) of a higher education institution; and
 - (B) whose educational opportunities could be adversely impacted by a special trust employee.
- (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim for an injury resulting from a sexual battery committed against a subordinate student by a special trust employee, unless:
 - (i) the institution proves that the special trust employee's behavior that otherwise would constitute a sexual battery was:
 - (A) with a subordinate student who was at least 18 years old at the time of the behavior; and
 - (B) with the student's consent; or
 - (ii)
 - (A) at the time of the sexual battery, the higher education institution was subject to a policy governing behavior; and
 - (B) before the sexual battery occurred, the higher education institution had taken steps to implement and enforce the policy governing behavior.

Amended by Chapter 74, 2024 General Session

Effective 7/1/2024

63G-7-301 Waivers of immunity.

- (1)
 - (a) Immunity from suit of each governmental entity is waived as to any contractual obligation.
 - (b) Actions arising out of contractual rights or obligations are not subject to the requirements of Section 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.
 - (c) The Division of Water Resources is not liable for failure to deliver water from a reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development Act, if the failure to deliver the contractual amount of water is due to drought, other natural condition, or safety condition that causes a deficiency in the amount of available water.
- (2) Immunity from suit of each governmental entity is waived:
 - (a) as to any action brought to recover, obtain possession of, or quiet title to real or personal property;
 - (b) as to any action brought to foreclose mortgages or other liens on real or personal property, to determine any adverse claim on real or personal property, or to obtain an adjudication about any mortgage or other lien that the governmental entity may have or claim on real or personal property;
 - (c) as to any action based on the negligent destruction, damage, or loss of goods, merchandise, or other property while it is in the possession of any governmental entity or employee, if the property was seized for the purpose of forfeiture under any provision of state law;
 - (d) subject to Section 63G-7-302, as to any action brought under the authority of Utah

Constitution, Article I, Section 22, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation;

- (e) as to any claim for attorney fees or costs under Section 63G-2-209, 63G-2-405, or 63G-2-802;
 - (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees Act;
 - (g) as to any action brought to obtain relief from a land use regulation that imposes a substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious Land Use Act;
 - (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:
 - (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or
 - (ii) any defective or dangerous condition of a public building, structure, dam, reservoir, or other public improvement;
 - (i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment;
 - (j) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from a sexual battery, as provided in Section 76-9-702.1, committed:
 - (i) against a student of a public elementary or secondary school, including a charter school; and
 - (ii) by an employee of a public elementary or secondary school or charter school who:
 - (A) at the time of the sexual battery, held a position of special trust, as defined in Section 76-5-404.1, with respect to the student;
 - (B) is criminally charged in connection with the sexual battery; and
 - (C) the public elementary or secondary school or charter school knew or in the exercise of reasonable care should have known, at the time of the employee's hiring, to be a sex offender, kidnap offender, or child abuse offender as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, whose status as a sex offender, kidnap offender, or child abuse offender would have been revealed in a background check under Section 53G-11-402;
 - (k) as to any action brought under Section 78B-6-2303; and
 - (l) as to any action brought to obtain relief under Title 53B, Chapter 27, Part 6, Student Legal Representation.
- (3)
- (a) As used in this Subsection (3):
 - (i) "Code of conduct" means a code of conduct that:
 - (A) is not less stringent than a model code of conduct, created by the State Board of Education, establishing a professional standard of care for preventing the conduct described in Subsection (3)(a)(i)(D);
 - (B) is adopted by the applicable local education governing body;
 - (C) regulates behavior of a school employee toward a student; and
 - (D) includes a prohibition against any sexual conduct between an employee and a student and against the employee and student sharing any sexually explicit or lewd communication, image, or photograph.
 - (ii) "Local education agency" means:
 - (A) a school district;
 - (B) a charter school; or
 - (C) the Utah Schools for the Deaf and the Blind.
 - (iii) "Local education governing board" means:

- (A) for a school district, the local school board;
 - (B) for a charter school, the charter school governing board; or
 - (C) for the Utah Schools for the Deaf and the Blind, the state board.
 - (iv) "Public school" means a public elementary or secondary school.
 - (v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).
 - (vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering the term "child" in that section to include an individual under age 18.
- (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim against a local education agency for an injury resulting from a sexual battery or sexual abuse committed against a student of a public school by a paid employee of the public school who is criminally charged in connection with the sexual battery or sexual abuse, unless:
- (i) at the time of the sexual battery or sexual abuse, the public school was subject to a code of conduct; and
 - (ii) before the sexual battery or sexual abuse occurred, the public school had:
 - (A) provided training on the code of conduct to the employee; and
 - (B) required the employee to sign a statement acknowledging that the employee has read and understands the code of conduct.
- (4)
- (a) As used in this Subsection (4):
- (i) "Higher education institution" means an institution included within the state system of higher education under Section 53B-1-102.
 - (ii) "Policy governing behavior" means a policy adopted by a higher education institution or the Utah Board of Higher Education that:
 - (A) establishes a professional standard of care for preventing the conduct described in Subsections (4)(a)(ii)(C) and (D);
 - (B) regulates behavior of a special trust employee toward a subordinate student;
 - (C) includes a prohibition against any sexual conduct between a special trust employee and a subordinate student; and
 - (D) includes a prohibition against a special trust employee and subordinate student sharing any sexually explicit or lewd communication, image, or photograph.
 - (iii) "Sexual battery" means the offense described in Section 76-9-702.1.
 - (iv) "Special trust employee" means an employee of a higher education institution who is in a position of special trust, as defined in Section 76-5-404.1, with a higher education student.
 - (v) "Subordinate student" means a student:
 - (A) of a higher education institution; and
 - (B) whose educational opportunities could be adversely impacted by a special trust employee.
- (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim for an injury resulting from a sexual battery committed against a subordinate student by a special trust employee, unless:
- (i) the institution proves that the special trust employee's behavior that otherwise would constitute a sexual battery was:
 - (A) with a subordinate student who was at least 18 years old at the time of the behavior; and
 - (B) with the student's consent; or
 - (ii)
 - (A) at the time of the sexual battery, the higher education institution was subject to a policy governing behavior; and
 - (B) before the sexual battery occurred, the higher education institution had taken steps to implement and enforce the policy governing behavior.

Amended by Chapter 234, 2024 General Session

63G-7-302 Assessment of compensation and damages in an action for taking or damaging private property.

- (1) Except as provided in Subsection (2), in an action brought under Utah Constitution, Article I, Section 22, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation, compensation and damages shall be assessed according to Title 78B, Chapter 6, Part 5, Eminent Domain.
- (2) In an action brought under Utah Constitution, Article I, Section 22, for the recovery of compensation for the interruption of water use in the case of a temporary water shortage emergency that results in the taking or damage of property for public uses without just compensation, compensation and damages shall be assessed in accordance with Title 73, Chapter 3d, Water Preferences During Emergencies.

Amended by Chapter 126, 2023 General Session

Part 4

Notice of Claim Against a Governmental Entity or a Government Employee

63G-7-401 When a claim arises -- Notice of claim requirements -- Governmental entity statement -- Limits on challenging validity or timeliness of notice of claim.

- (1)
 - (a) Except as provided in Subsection (1)(b), a claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.
 - (b) The statute of limitations does not begin to run until a claimant knew, or with the exercise of reasonable diligence should have known:
 - (i) that the claimant had a claim against the governmental entity or the governmental entity's employee; and
 - (ii) the identity of the governmental entity or the name of the employee.
 - (c) The burden to prove the exercise of reasonable diligence is upon the claimant.
- (2) Any person having a claim against a governmental entity, or against the governmental entity's employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority shall file a written notice of claim with the entity before maintaining an action, regardless of whether or not the function giving rise to the claim is characterized as governmental.
- (3)
 - (a) The notice of claim shall set forth:
 - (i) a brief statement of the facts;
 - (ii) the nature of the claim asserted;
 - (iii) the damages incurred by the claimant so far as the damages are known; and
 - (iv) if the claim is being pursued against a governmental employee individually as provided in Subsection 63G-7-202(3)(c), the name of the employee.
 - (b) The notice of claim shall be:

- (i) signed by the person making the claim or that person's agent, attorney, parent, or legal guardian, using any form of signature recognized by law as binding; and
 - (ii) delivered, transmitted, or sent, as provided in Subsection (3)(c), to the office of:
 - (A) the city or town clerk, when the claim is against an incorporated city or town;
 - (B) the county clerk, when the claim is against a county;
 - (C) the superintendent or business administrator of the board, when the claim is against a school district or board of education;
 - (D) the presiding officer or secretary or clerk of the board, when the claim is against a special district or special service district;
 - (E) the attorney general, when the claim is against the state;
 - (F) a member of the governing board, the executive director, or executive secretary, when the claim is against any other public board, commission, or body; or
 - (G) the agent authorized by a governmental entity to receive the notice of claim by the governmental entity under Subsection (5)(e).
 - (c) A notice of claim shall be:
 - (i) delivered by hand to the physical address provided under Subsection (5)(a)(iii)(A);
 - (ii) transmitted by mail to the physical address provided under Subsection (5)(a)(iii)(A), according to the requirements of Section 68-3-8.5; or
 - (iii) sent by electronic mail to the email address provided under Subsection (5)(a)(iii)(B).
 - (d) A claimant who submits a notice of claim by electronic mail under Subsection (3)(c)(iii) shall contemporaneously send a copy of the notice of claim by electronic mail to the city attorney, district attorney, county attorney, attorney general, or other attorney, as the case may be, who represents the governmental entity.
- (4)
- (a) If an injury that may reasonably be expected to result in a claim against a governmental entity is sustained by a claimant who is under the age of majority or mentally incompetent, that governmental entity may file a request with the court for the appointment of a guardian ad litem for the potential claimant.
 - (b) If a guardian ad litem is appointed, the time for filing a claim under Section 63G-7-402 begins when the order appointing the guardian ad litem is issued.
- (5)
- (a) A governmental entity subject to suit under this chapter shall file a statement with the Division of Corporations and Commercial Code within the Department of Commerce containing:
 - (i) the name and address of the governmental entity;
 - (ii) the office or agent designated to receive a notice of claim; and
 - (iii)
 - (A) the physical address to which a notice of claim is to be delivered by hand or transmitted by mail, for a notice of claim that a claimant chooses to hand deliver or transmit by mail; and
 - (B) the email address to which a notice of claim is to be sent, for a notice of claim that a claimant chooses to send by email, and the email address of the city attorney, district attorney, county attorney, attorney general, or other attorney, as the case may be, who represents the governmental entity.
 - (b) A governmental entity shall update the governmental entity's statement as necessary to ensure that the information is accurate.
 - (c) The Division of Corporations and Commercial Code shall develop a form for governmental entities to complete that provides the information required by Subsection (5)(a).
 - (d)

- (i) A newly incorporated municipality shall file the statement required by Subsection (5)(a) promptly after the lieutenant governor issues a certificate of incorporation under Section 67-1a-6.5.
- (ii) A newly incorporated special district shall file the statement required by Subsection (5)(a) at the time that the written notice is filed with the lieutenant governor under Section 17B-1-215.
- (e) A governmental entity may, in the governmental entity's statement, identify an agent authorized to accept notices of claim on behalf of the governmental entity.
- (6) The Division of Corporations and Commercial Code shall:
 - (a) maintain an index of the statements required by this section arranged both alphabetically by entity and by county of operation; and
 - (b) make the indices available to the public both electronically and via hard copy.
- (7) A governmental entity may not challenge the validity of a notice of claim on the grounds that it was not directed and delivered to the proper office or agent if the error is caused by the governmental entity's failure to file or update the statement required by Subsection (5).
- (8) A governmental entity may not challenge the timeliness, under Section 63G-7-402, of a notice of claim if:
 - (a)
 - (i) the claimant files a notice of claim with the governmental entity:
 - (A) in accordance with the requirements of this section; and
 - (B) within 30 days after the expiration of the time for filing a notice of claim under Section 63G-7-402;
 - (ii) the claimant demonstrates that the claimant previously filed a notice of claim:
 - (A) in accordance with the requirements of this section;
 - (B) with an incorrect governmental entity;
 - (C) in the good faith belief that the claimant was filing the notice of claim with the correct governmental entity;
 - (D) within the time for filing a notice of claim under Section 63G-7-402; and
 - (E) no earlier than 30 days before the expiration of the time for filing a notice of claim under Section 63G-7-402; and
 - (iii) the claimant submits with the notice of claim:
 - (A) a copy of the previous notice of claim that was filed with a governmental entity other than the correct governmental entity; and
 - (B) proof of the date the previous notice of claim was filed; or
 - (b)
 - (i) the claimant delivers by hand, transmits by mail, or sends by email a notice of claim:
 - (A) to an elected official or executive officer of the correct governmental entity but not to the correct office under Subsection (3)(b)(ii); and
 - (B) that otherwise meets the requirements of Subsection (3); and
 - (ii)
 - (A) the claimant contemporaneously sends a hard copy or electronic copy of the notice of claim to the office of the city attorney, district attorney, county attorney, attorney general, or other attorney, as the case may be, representing the correct governmental entity; or
 - (B) the governmental entity does not, within 60 days after the claimant delivers the notice of claim under Subsection (8)(b)(i), provide written notification to the claimant of the delivery defect and of the identity of the correct office to which the claimant is required to deliver the notice of claim.

63G-7-402 Time for filing notice of claim.

A claim against a governmental entity, or against an employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the person and according to the requirements of Section 63G-7-401 within one year after the claim arises regardless of whether or not the function giving rise to the claim is characterized as governmental.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-7-403 Notifying of the receipt of a notice of claim -- Action in district court -- Time for commencing action -- Commencing action after time limit.

- (1) Within 60 days after the filing of a notice of claim, the governmental entity, the entity's representative, or the entity's insurance carrier shall inform the claimant in writing:
 - (a) that the notice of claim has been received; and
 - (b) if applicable, that the governmental entity believes it is not the correct governmental entity with which the notice of claim should have been filed.
- (2)
 - (a)
 - (i) Subject to Subsections (2)(a)(ii) and (b), a claimant may pursue an action in the district court against the governmental entity or an employee of the entity.
 - (ii) A claimant may not file an action before the date that is 60 days after the claimant's notice of claim is filed.
 - (b) Subject to Subsection (3), a claimant shall commence the action within two years after the claim arises, as provided in Subsection 63G-7-401(1), regardless of whether or not the function giving rise to the claim is characterized as governmental.
- (3)
 - (a) As used in this Subsection (3), "claimant" includes a representative of an individual:
 - (i) who dies before an action is begun under this section; and
 - (ii) whose cause of action survives the individual's death.
 - (b) A claimant may commence an action after the time limit described in Subsection (2)(b) if:
 - (i) the claimant had commenced a previous action within the time limit of Subsection (2)(b);
 - (ii) the previous action failed or was dismissed for a reason other than on the merits; and
 - (iii) the claimant commences the new action within one year after the previous action failed or was dismissed.
 - (c) A claimant may commence a new action under Subsection (3)(b) only once.

Amended by Chapter 53, 2020 General Session

Part 5
Legal Actions Under this Chapter - Jurisdiction and Venue

Superseded 7/1/2024

63G-7-501 Jurisdiction of district courts over actions.

- (1) The district courts have exclusive, original jurisdiction over any action brought under this chapter.

(2) An action brought under this chapter may not be tried as a small claims action.

Renumbered and Amended by Chapter 382, 2008 General Session

Effective 7/1/2024

63G-7-501 Actions brought under this chapter.

An action brought under this chapter may not be tried as a small claims action.

Amended by Chapter 158, 2024 General Session

Superseded 7/1/2024

63G-7-502 Venue of actions.

(1) Actions against the state may be brought in the county in which the claim arose or in Salt Lake County.

(2)

(a) Actions against a county may be brought in the county in which the claim arose, or in the defendant county.

(b)

(i) A district court judge of the defendant county may transfer venue to any county contiguous to the defendant county.

(ii) A motion to transfer may be filed ex parte.

(3) Actions against all other political subdivisions, including cities and towns, shall be brought in the county in which the political subdivision is located or in the county in which the claim arose.

Amended by Chapter 33, 2016 General Session

Effective 7/1/2024

63G-7-502 Venue of actions.

(1) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, a person shall bring an action described in this chapter in:

(a) Salt Lake County; or

(b) the county in which the claim arose.

(2)

(a) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, a person shall bring an action against a county in:

(i) the county in which the claim arose; or

(ii) the defendant county.

(b)

(i) A district court judge of the defendant county may transfer venue to any county contiguous to the defendant county.

(ii) A motion to transfer may be filed ex parte.

(3) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, a person shall bring an action against any other political subdivision, including a city or a town, in the county in which:

(a) the political subdivision is located; or

(b) the claim arose.

Amended by Chapter 158, 2024 General Session

Part 6
**Legal Actions Under this Chapter - Procedures,
Requirements, Damages, and Limitations on Judgments**

63G-7-601 Actions governed by Utah Rules of Civil Procedure -- Undertaking required.

- (1) An action brought under this chapter shall be governed by the Utah Rules of Civil Procedure to the extent that they are consistent with this chapter.
- (2) A plaintiff who files an action under this chapter shall file an undertaking within 20 days after commencement of the action:
 - (a) in the amount of \$300, unless otherwise ordered by the court; and
 - (b) conditioned upon payment by the plaintiff of taxable costs incurred by the governmental entity in the action if the plaintiff fails to prosecute the action or fails to recover judgment.
- (3) If a plaintiff does not file an undertaking as required in Subsection (2), a court may, sua sponte or pursuant to a motion, order the plaintiff to file an undertaking in an amount and by a deadline that the court establishes.
- (4) A defendant waives a defense based on the plaintiff's failure to file an undertaking under this section if the defendant does not raise the plaintiff's failure to file an undertaking as an affirmative defense in the defendant's initial responsive pleading.

Amended by Chapter 229, 2019 General Session

63G-7-602 Compromise and settlement of claims by political subdivision.

A political subdivision, after conferring with its legal officer or other legal counsel if it does not have a legal officer, may compromise and settle any action as to the damages or other relief sought.

Amended by Chapter 355, 2015 General Session

63G-7-603 Exemplary or punitive damages prohibited -- Governmental entity not subject to execution, attachment, or garnishment -- Exception.

- (1)
 - (a) A judgment may not be rendered against a governmental entity for exemplary or punitive damages.
 - (b) If a governmental entity would be required to pay the judgment under Section 63G-7-902 or 63G-7-903, the governmental entity shall pay any judgment or portion of any judgment entered against its employee in the employee's personal capacity even if the judgment is for or includes exemplary or punitive damages.
- (2)
 - (a) Except as provided in Subsection (2)(b), execution, attachment, or garnishment may not issue against a governmental entity.
 - (b) A judgment creditor may garnish a state income tax refund owing to the judgment debtor.

Amended by Chapter 152, 2017 General Session

63G-7-604 Limitation of judgments against governmental entity or employee -- Process for adjustment of limits.

- (1)
 - (a) Except as provided in Subsection (2) and subject to Subsection (3), if a judgment for damages for personal injury against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds \$583,900 for one person in any one occurrence, the court shall reduce the judgment to that amount.
 - (b) A court may not award judgment of more than the amount in effect under Subsection (1)(a) for injury or death to one person regardless of whether or not the function giving rise to the injury is characterized as governmental.
 - (c) Except as provided in Subsection (2) and subject to Subsection (3), if a judgment for property damage against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds \$233,600 in any one occurrence, the court shall reduce the judgment to that amount, regardless of whether or not the function giving rise to the damage is characterized as governmental.
 - (d) Subject to Subsection (3), there is a \$3,000,000 limit to the aggregate amount of individual awards that may be awarded in relation to a single occurrence.
- (2) The damage limits established in this section do not apply to damages awarded as compensation when a governmental entity has taken or damaged private property for public use without just compensation.
- (3) The limitations of judgments established in Subsection (1) shall be adjusted according to the methodology set forth in Section 63G-7-605.

Amended by Chapter 229, 2019 General Session

63G-7-605 Adjustments to limitation of judgment amounts.

- (1) As used in this section:
 - (a) "Adjusted consumer price factor" means what the consumer price index would be without the medical care component and the medical services component.
 - (b) "Aggregate limit" means the limit on the aggregate amount of personal injury damages claims from a single occurrence, as provided in Subsection 63G-7-604(1)(d).
 - (c) "Applicable index" means:
 - (i) the consumer price index, for a calculation of the percentage change in the consumer price index;
 - (ii) the adjusted consumer price factor, for a calculation of the percentage change in the adjusted consumer price factor;
 - (iii) the medical care component, for a calculation of the percentage change in the medical care component; or
 - (iv) the medical services component, for a calculation of the percentage change in the medical services component.
 - (d) "Base applicable index" means an applicable index for the year that is three years before the year in which the legislative fiscal analyst calculates new limits under this section.
 - (e) "Consumer price index" means the annual index reported by the United States Bureau of Labor Statistics for consumer prices for all urban consumers, not seasonally adjusted.
 - (f) "Individual limit" means the limit on the amount of a judgment for damages for personal injury, as provided in Subsection 63G-7-604(1)(a).
 - (g) "Latest aggregate limit" means the aggregate limit, as last adjusted by the risk manager under this section.
 - (h) "Latest individual limit" means the individual limit, as last adjusted by the risk manager under this section.

- (i) "Latest property damage limit" means the property damage limit, as last adjusted by the risk manager under this section.
 - (j) "Medical care component" means the medical care sub-index of the consumer price index.
 - (k) "Medical services component" means the medical care services sub-index of the consumer price index.
 - (l) "Percentage change" means the amount of change between the base applicable index and the applicable index for the year before the year in which the legislative fiscal analyst calculates new limits under this section, expressed as a percentage of the base applicable index.
 - (m) "Property damage limit" means the limit on the amount of a judgment for property damage, as provided in Subsection 63G-7-604(1)(c).
 - (n) "Risk manager" means the state risk manager appointed under Section 63A-4-101.5.
- (2) Each even-numbered year, the legislative fiscal analyst shall, subject to Subsection (3):
- (a) calculate a new individual limit by adding to the latest individual limit the sum of:
 - (i) 66.5% of the latest individual limit, multiplied by the percentage change in the adjusted consumer price factor;
 - (ii) 16.75% of the latest individual limit, multiplied by the percentage change in the medical care component; and
 - (iii) 16.75% of the latest individual limit, multiplied by the percentage change in the medical services component;
 - (b) calculate a new aggregate limit by adding to the latest aggregate limit the sum of:
 - (i) 66.5% of the latest aggregate limit, multiplied by the percentage change in the adjusted consumer price factor;
 - (ii) 16.75% of the latest aggregate limit, multiplied by the percentage change in the medical care component; and
 - (iii) 16.75% of the latest aggregate limit, multiplied by the percentage change in the medical services component;
 - (c) calculate a new property damage limit by adding to the latest property damage limit the amount of the latest property damage limit multiplied by the percentage change in the consumer price index;
 - (d) round up to the nearest \$100 the individual limit, aggregate limit, and property damage limit calculated under Subsections (2)(a), (b), and (c); and
 - (e) no later than May 1, communicate the newly calculated limits under Subsections (2)(a), (b), and (c) to the risk manager.
- (3) The newly calculated individual limit, aggregate limit, or property damage limit under Subsection (2) may not be less than the amount of the limit before the new calculation under Subsection (2).
- (4)
- (a) Each even-numbered year, the risk manager shall make rules, to become effective no later than July 1 of that year, that establish a new individual limit, aggregate limit, and property damage limit, as calculated under Subsection (2).
 - (b) A newly calculated individual limit, aggregate limit, or property damage limit under this section has prospective effect only from the date the rules establishing the new limit take effect.
 - (c) An individual limit, aggregate limit, or property damage limit, as newly calculated under this section, applies only to a claim for injury or loss that occurs after the effective date of the rules that establish the newly calculated limit.

Amended by Chapter 33, 2021 General Session

Part 7
Payment Process and Sources for Paying
Proved Claims Against Governmental Entities

63G-7-701 Payment of claim or judgment against state -- Presentment for payment.

- (1) Each claim that is approved by the state or any final judgment obtained against the state shall be presented for payment to:
 - (a) the state risk manager; or
 - (b) the office, agency, institution, or other instrumentality involved, if payment by that instrumentality is otherwise permitted by law.
- (2) If payment of the claim is not authorized by law, the judgment or claim shall be presented to the board of examiners for action as provided in Section 63G-9-301.
- (3) If a judgment against the state is reduced by the operation of Section 63G-7-604, the claimant may submit the excess claim to the board of examiners.

Amended by Chapter 4, 2020 Special Session 5

63G-7-702 Payment of claim or judgment against political subdivision -- Procedure by governing body -- Payment options.

- (1)
 - (a) Each claim approved by a political subdivision or any final judgment obtained against a political subdivision shall be submitted to the governing body of the political subdivision.
 - (b) The governing body shall pay the claim immediately from the general funds of the political subdivision unless:
 - (i) the funds are appropriated to some other use or restricted by law or contract for other purposes;
 - (ii) the political subdivision opts to pay the claim or award in installments under Subsection (2); or
 - (iii) the political subdivision elects to bond for the portion of the claim, judgment, or settlement that exceeds \$3,000,000 in accordance with Subsection 11-14-103(1)(d).
- (2) Except as provided in Subsection (3), if the subdivision is unable to pay the claim or award during the current fiscal year, it may pay the claim or award in not more than 10 ensuing annual installments of equal size or in whatever other installments that are agreeable to the claimant.
- (3) If a political subdivision elects to bond for the portion of a claim, judgment, or settlement that exceeds \$3,000,000 in accordance with Subsection 11-14-103(1)(d), the political subdivision may issue bonds with a maturity date not to exceed 21 years.

Amended by Chapter 386, 2016 General Session

63G-7-703 Reserve funds for payment of claims or purchase of insurance created by political subdivisions.

Any political subdivision may create and maintain a reserve fund or, may jointly with one or more other political subdivisions, make contributions to a joint reserve fund, for the purpose of:

- (1) making payment of claims against the cooperating subdivisions when they become payable under this chapter; or

- (2) for the purpose of purchasing liability insurance to protect the cooperating subdivisions from any or all risks created by this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-7-704 Tax levy by political subdivisions for payment of claims, judgments, or insurance premiums.

- (1) Notwithstanding any provision of law to the contrary, a political subdivision may levy an annual property tax sufficient to pay:
 - (a) any claim, settlement, or judgment, including interest payments and issuance costs for bonds issued under Subsection 11-14-103(1)(d) to pay the portion of any claim, settlement, or judgment that exceeds \$3,000,000;
 - (b) the costs to defend against any claim, settlement, or judgment; or
 - (c) for the establishment and maintenance of a reserve fund for the payment of claims, settlements, or judgments that may be reasonably anticipated.
- (2)
 - (a) The payments authorized to pay for punitive damages or to pay the premium for authorized insurance is money spent for a public purpose within the meaning of this section and Utah Constitution, Article XIII, Sec. 5, even though, as a result of the levy, the maximum levy as otherwise restricted by law is exceeded.
 - (b)
 - (i) Except as provided in Subsection (2)(b)(ii), a levy under this section may not exceed .0001 per dollar of taxable value of taxable property.
 - (ii) A levy under Subsection (1)(a) to pay the portion of any claim, settlement, or judgment that exceeds \$3,000,000 may not exceed .001 per dollar of taxable value of taxable property.
 - (c) Except as provided in Subsection 17-36-29(1), the revenues derived from this levy may not be used for any purpose other than those specified in this section.
- (3) Beginning January 1, 2012, a local school board may not levy a tax in accordance with this section.
- (4) A political subdivision that levies an annual property tax under Subsection (1)(a) to pay the portion of any claim, settlement, or judgment that exceeds \$3,000,000:
 - (a) shall comply with the notice and public hearing requirements under Section 59-2-919; and
 - (b) may levy the annual property tax until the bonds' maturity dates expire.

Amended by Chapter 453, 2017 General Session

Part 8

Self-Insurance and Purchase of Liability Insurance by Governmental Entities

63G-7-801 Insurance -- Self-insurance or purchase of liability insurance by governmental entity authorized -- Establishment of trust accounts for self-insurance.

- (1) Any governmental entity within the state may self-insure, purchase commercial insurance, or self-insure and purchase excess commercial insurance in excess of the statutory limits of this chapter against:
 - (a) any risk created or recognized by this chapter; or
 - (b) any action for which a governmental entity or its employee may be held liable.

- (2)
- (a) In addition to any other reasonable means of self-insurance, a governmental entity may self-insure with respect to specified classes of claims by establishing a trust account.
 - (b) In creating the trust account, the governmental entity shall ensure that:
 - (i) the trust account is managed by an independent private trustee; and
 - (ii) the independent private trustee has authority, with respect to claims covered by the trust, to:
 - (A) expend both principal and earnings of the trust account solely to pay the costs of investigation, discovery, and other pretrial and litigation expenses including attorneys' fees; and
 - (B) pay all sums for which the governmental entity may be adjudged liable or for which a compromise settlement may be agreed upon.
 - (c) Notwithstanding any law to the contrary, the trust agreement between the governmental entity and the trustee may authorize the trustee to:
 - (i) employ counsel to defend actions against the entity and its employees;
 - (ii) protect and safeguard the assets of the trust;
 - (iii) provide for claims investigation and adjustment services;
 - (iv) employ expert witnesses and consultants; and
 - (v) provide other services and functions that are necessary and proper to carry out the purposes of the trust.
 - (d) The money and interest earned on the trust fund may be invested by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act, and are subject to audit by the state auditor.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-7-802 Insurance -- Liability insurance -- Government vehicles operated by employees outside scope of employment.

- (1) A governmental entity that owns vehicles driven by an employee of the governmental entity with the express or implied consent of the entity, but which, at the time liability is incurred as a result of an automobile accident, is not being driven and used within the course and scope of the driver's employment is, subject to Subsection (2), considered to provide the driver with the insurance coverage required by Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act.
- (2) The liability coverages considered provided are the minimum limits under Section 31A-22-304.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-7-803 Liability insurance -- Construction of policy not in compliance with act.

- (1) If any insurance policy, rider, or endorsement issued after June 30, 2004 that was purchased to insure against any risk that may arise as a result of the application of this chapter contains any condition or provision not in compliance with the requirements of this chapter, that policy, rider, or endorsement is not invalid, but shall be construed and applied according to the conditions and provisions that would have applied had the policy, rider, or endorsement been in full compliance with this chapter, provided that the policy is otherwise valid.
- (2) If any insurance policy, rider, or endorsement issued after June 30, 1966 and before July 1, 2004 that was purchased to insure against any risk that may arise as a result of the application of this chapter contains any condition or provision not in compliance with the requirements of the chapter, that policy, rider, or endorsement is not invalid, but shall be construed and applied

according to the conditions and provisions that would have applied had the policy, rider, or endorsement been in full compliance with this chapter, provided that the policy is otherwise valid.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-7-804 Liability insurance -- Methods for purchase or renewal.

- (1) Except as provided in Subsection (2), a contract or policy of insurance may be purchased or renewed under this chapter only upon public bid to be let to the lowest and best bidder.
- (2) The purchase or renewal of insurance by the state shall be conducted in accordance with the provisions of Title 63G, Chapter 6a, Utah Procurement Code.

Amended by Chapter 347, 2012 General Session

63G-7-805 Liability insurance -- Insurance for employees authorized -- No right to indemnification or contribution from governmental agency.

- (1)
 - (a) A governmental entity may insure any or all of its employees against liability, in whole or in part, for injury or damage resulting from an act or omission occurring during the performance of an employee's duties, within the scope of employment, or under color of authority, regardless of whether or not that entity is immune from suit for that act or omission.
 - (b) Any expenditure for that insurance is for a public purpose.
 - (c) Under any contract or policy of insurance providing coverage on behalf of a governmental entity or employee for any liability defined by this section, regardless of the source of funding for the coverage, the insurer has no right to indemnification or contribution from the governmental entity or its employee for any loss or liability covered by the contract or policy.
- (2) Any surety covering a governmental entity or its employee under any faithful performance surety bond has no right to indemnification or contribution from the governmental entity or its employee for any loss covered by that bond based on any act or omission for which the governmental entity would be obligated to defend or indemnify under the provisions of Section 63G-7-902.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 9
Coverage and Representation of State Entities and Employees

63G-7-901 Expenses of attorney general, general counsel for state judiciary, and general counsel for the Legislature in representing the state, the state's branches, members, or employees.

- (1)
 - (a) The Office of the Attorney General has primary responsibility to provide legal representation to the judicial, executive, and legislative branches of state government in cases where coverage under the Risk Management Fund created by Section 63A-4-201 applies.
 - (b) When the attorney general has primary responsibility to provide legal representation to the judicial or legislative branches, the attorney general shall consult with the general counsel for

the state judiciary and with the general counsel for the Legislature, to solicit their assistance in defending their respective branch, and in determining strategy and making decisions concerning the disposition of those claims.

- (c) Notwithstanding Subsection (1)(b), the decision for settlement of monetary claims in those cases lies with the attorney general and the state risk manager.

(2)

- (a) If the Judicial Council, after consultation with the general counsel for the state judiciary, determines that the Office of the Attorney General cannot adequately defend the state judiciary, its members, or employees because of a conflict of interest, separation of powers concerns, or other political or legal differences, the Judicial Council may direct its general counsel to separately represent and defend it.
- (b) If the general counsel for the state judiciary undertakes independent legal representation of the state judiciary, its members, or employees, the general counsel shall notify the state risk manager and the attorney general in writing before undertaking that representation.
- (c) If the state judiciary elects to be represented by its own counsel under this section, the decision for settlement of claims against the state judiciary, its members, or employees, where Risk Management Fund coverage applies, lies with the general counsel for the state judiciary and the state risk manager.

(3)

- (a) If the Legislative Management Committee, after consultation with the general counsel for the Legislature, determines that the Office of the Attorney General cannot adequately defend the legislative branch, its members, or employees because of a conflict of interest, separation of powers concerns, or other political or legal differences, the Legislative Management Committee may direct its general counsel to separately represent and defend it.
- (b) If the general counsel for the Legislature undertakes independent legal representation of the Legislature, its members, or employees, the general counsel shall notify the state risk manager and the attorney general in writing before undertaking that representation.
- (c) If the legislative branch elects to be represented by its own counsel under this section, the decision for settlement of claims against the legislative branch, its members, or employees, where Risk Management Fund coverage applies, lies with the general counsel for the Legislature and the state risk manager.

(4)

- (a) Notwithstanding the provisions of Section 67-5-3 or any other provision of the Utah Code, the attorney general, the general counsel for the state judiciary, and the general counsel for the Legislature may bill the Department of Government Operations for all costs and legal fees expended by their respective offices, including attorneys' and secretarial salaries, in representing the state or any indemnified employee against any claim for which the Risk Management Fund may be liable and in advising state agencies and employees regarding any of those claims.
- (b) The risk manager shall draw funds from the Risk Management Fund for this purpose.

Amended by Chapter 344, 2021 General Session

63G-7-902 Defending government employee -- Request -- Cooperation -- Payment of judgment.

- (1) Except as provided in Subsections (2) and (3), a governmental entity shall defend any action brought against its employee arising from an act or omission occurring:
- (a) during the performance of the employee's duties;

- (b) within the scope of the employee's employment; or
 - (c) under color of authority.
- (2)
- (a) Before a governmental entity may defend its employee against a claim, the employee shall make a written request to the governmental entity to defend the employee:
 - (i) within 10 days after service of process upon the employee; or
 - (ii) within a longer period that would not prejudice the governmental entity in maintaining a defense on the employee's behalf; or
 - (iii) within a period that would not conflict with notice requirements imposed on the entity in connection with insurance carried by the entity relating to the risk involved.
 - (b) If the employee fails to make a request, or fails to reasonably cooperate in the defense, including the making of an offer of judgment under Rule 68, Utah Rules of Civil Procedure, Offers of Judgment, the governmental entity need not defend or continue to defend the employee, nor pay any judgment, compromise, or settlement against the employee in respect to the claim.
- (3) The governmental entity may decline to defend, or, subject to any court rule or order, decline to continue to defend, an action against an employee if it determines:
- (a) that the act or omission in question did not occur:
 - (i) during the performance of the employee's duties;
 - (ii) within the scope of the employee's employment; or
 - (iii) under color of authority; or
 - (b) that the injury or damage on which the claim was based resulted from conditions set forth in Subsection 63G-7-202(3)(c).
- (4)
- (a) Within 10 days of receiving a written request to defend an employee, the governmental entity shall inform the employee whether or not it shall provide a defense, and, if it refuses to provide a defense, the basis for its refusal.
 - (b) A refusal by the entity to provide a defense is not admissible for any purpose in the action in which the employee is a defendant.
- (5) Except as provided in Subsection (6), if a governmental entity conducts the defense of an employee, the governmental entity shall pay any judgment based upon the claim.
- (6) A governmental entity may conduct the defense of an employee under a reservation of rights under which the governmental entity reserves the right not to pay a judgment if any of the conditions set forth in Subsection (3) are established.
- (7)
- (a) Nothing in this section or Section 63G-7-903 affects the obligation of a governmental entity to provide insurance coverage according to the requirements of Subsection 41-12a-301(3) and Section 63G-7-802.
 - (b) When a governmental entity declines to defend, or declines to continue to defend, an action against its employee under any of the conditions set forth in Subsection (3), it shall still provide coverage up to the amount specified in Section 31A-22-304.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-7-903 Recovery of judgment paid and defense costs by government employee.

- (1) Subject to Subsection (2), if an employee pays a judgment entered against him, or any portion of it, that the governmental entity is required to pay under Section 63G-7-902, the employee

may recover from the governmental entity the amount of the payment and the reasonable costs incurred in the employee's defense.

- (2)
- (a) If a governmental entity does not conduct the defense of an employee against a claim, or conducts the defense under a reservation of rights as provided in Subsection 63G-7-902(6), the employee may recover from the governmental entity under Subsection (1) if the employee can prove that none of the conditions set forth in Subsection 63G-7-202(3)(c) applied.
 - (b) The employee has the burden of proof that none of the conditions set forth in Subsection 63G-7-202(3)(c) applied.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-7-904 Indemnification of governmental entity by employee not required.

If a governmental entity pays all or part of a judgment, compromise, or settlement based on a claim against the governmental entity or an employee, the employee is not required to indemnify the governmental entity for the payment.

Renumbered and Amended by Chapter 382, 2008 General Session

Chapter 8
Immunity for Persons Performing Voluntary Services Act

Part 1
General Provisions

63G-8-101 Title.

This chapter is known as the "Immunity for Persons Performing Voluntary Services Act."

Enacted by Chapter 382, 2008 General Session

63G-8-102 Definitions.

As used in this act:

- (1) "Compensation" means payment for services in any form whatsoever, whether per diem or otherwise, except where the payment is solely for the purpose of paying subsistence, travel, or other expenses incurred by the person performing those services.
- (2) "Public entity" means the state or any political subdivision of it, or any office, department, division, board, agency, commission, council, authority, institution, hospital, school, college, university, or other instrumentality of the state or any political subdivision.
- (3) "Volunteer facilitator" is as defined in Section 67-20-2.

Amended by Chapter 249, 2013 General Session

Part 2
Immunity for Voluntary Services

63G-8-201 Voluntary services -- Immunity from liability -- Exceptions.

- (1) A person performing services on a voluntary basis, without compensation, under the general supervision of, and on behalf of any public entity, is immune from liability with respect to any decisions or actions, other than in connection with the operation of a motor vehicle, taken during the course of those services, unless it is established that such decisions or actions were grossly negligent, not made in good faith, or were made maliciously.
- (2) A volunteer facilitator is immune from liability to the extent provided in Subsection 67-20-3(4).
- (3) A person or entity owning a building or other facility and an operator of or an employee in a building or facility is immune from liability with respect to any decisions or actions related to emergency or public health conditions, as described in Subsection 63G-7-201(2)(b)(iii), while acting under the general supervision of or on behalf of any public entity.

Amended by Chapter 10, 2020 Special Session 5

63G-8-202 Action under Governmental Immunity Act of Utah permitted.

Nothing in this chapter shall preclude legal action against a public entity for any injury occurring as a result of the decisions or actions taken by a person performing services on a voluntary basis for that entity, where such action would otherwise be permitted under Title 63G, Chapter 7, Governmental Immunity Act of Utah.

Renumbered and Amended by Chapter 382, 2008 General Session

**Part 3
Application**

63G-8-301 Applicability of act.

This act shall apply to any actions or decisions taken subsequent to the effective date of this act.

Renumbered and Amended by Chapter 382, 2008 General Session

**Chapter 9
Board of Examiners Act**

**Part 1
General Provisions**

63G-9-101 Title.

This chapter is known as the "Board of Examiners Act."

Enacted by Chapter 382, 2008 General Session

Part 2 Board of Examiners

63G-9-201 Members -- Functions.

- (1) As used in this chapter:
 - (a) "Political subdivision" means any county, city, town, school district, community reinvestment agency, special improvement or taxing district, special district, special service district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, or other governmental subdivision or public corporation.
 - (b) "State" means the state of Utah, and includes each office, department, division, agency, authority, commission, board, institution, college, university, Children's Justice Center, or other instrumentality of the state.
- (2) The governor, the state auditor, and the attorney general shall constitute a Board of Examiners, with power to examine all claims against the state or a political subdivision, for the payment of which funds appropriated by the Legislature or derived from any other source are not available.
- (3) No claim against the state or a political subdivision, for the payment of which specifically designated funds are required to be appropriated by the Legislature shall be passed upon by the Legislature without having been considered and acted upon by the Board of Examiners.
- (4) The governor shall be the president, and the state auditor shall be the secretary of the board, and in the absence of either an officer pro tempore may be elected from among the members of the board.

Amended by Chapter 16, 2023 General Session

63G-9-202 Procedures -- Adjudicative proceedings.

The Board of Examiners shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-9-203 Meetings.

The meetings of the board shall be held upon the call of the president or any two members.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-9-204 Record of proceedings.

The board must keep a record of all its proceedings, and any member may cause the member's dissent to the action of a majority upon any matter to be entered upon such record. An abstract of all claims must be entered upon the minutes of the board before the same are acted upon.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-9-205 Rules and regulations.

The board may, in writing, establish rules and regulations not inconsistent with law for its government.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-9-206 Witnesses -- Subpoena -- Examination -- Fees.

The president of the board may issue subpoenas and compel the attendance of witnesses and the production of books and papers before the board or any member thereof; and any member of the board may administer oaths and may examine witnesses. Whenever a witness is subpoenaed before the board to testify against any claim pending before it, the board may allow a reasonable fee to such witness for attendance, which fee must not exceed the fees allowed by law to witnesses in civil cases, and must be paid out of the appropriation for the contingent expenses of the board; provided, that in no instance shall a fee be allowed to a witness who has appeared in behalf of a claimant.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-9-207 Depositions.

Each member of the board may take depositions to be used before it.

Renumbered and Amended by Chapter 382, 2008 General Session

**Part 3
Review of Claims**

63G-9-301 Audit and approval of claims -- Overexpenditure by agencies.

- (1)
- (a) The Board of Examiners shall audit any claim presented to it, if the settlement of the claim is required by law.
 - (b) If the claim is approved, the board shall transmit it to the Legislature with a statement of the reasons for the approval.
- (2) When an agency's line item appropriation has been overexpended and a written report is submitted to the board as required by Section 63J-1-217, the board shall review the report and either:
- (a) recommend and submit to the Legislature any supplemental appropriations or corrective legislation that may be needed; or
 - (b) recommend other internal procedures or policies that will make an overexpenditure in the future unlikely.

Amended by Chapter 183, 2009 General Session

63G-9-302 Form for presentment of claim against the state or political subdivision.

Any person having a claim against the state or a political subdivision, for which funds have not been provided for the payment thereof, or the settlement of which is not otherwise provided for by law, must present the same to the Board of Examiners, accompanied by a statement showing the facts constituting the claim.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-9-302.5 Special master proceeding for damages cap claims.

- (1) As used in this section:
- (a) "Claimant" means an individual who submits an excess damages claim to the board of examiners.
 - (b) "Damages cap" means the amount to which a personal injury claim is or would be reduced because of the operation of Subsection 63G-7-604(1)(a) or (d).
 - (c) "Damages cap settlement" means a settlement:
 - (i) between an individual with a personal injury claim that exceeds the damages cap and the governmental entity against which the personal injury claim is asserted; and
 - (ii) that provides for the governmental entity to pay the individual an amount equal to the damages cap to settle the personal injury claim.
 - (d) "Excess damages amount" means the amount of a personal injury claim that:
 - (i) exceeds the damages cap; and
 - (ii) a governmental entity would be liable to pay except for the operation of Subsection 63G-7-604(1)(a) or (d).
 - (e) "Excess damages claim" means a claim for an excess damages amount.
 - (f) "Government attorney" means:
 - (i) an attorney representing a political subdivision, if the personal injury claim that results in an excess damages claim was asserted against the political subdivision; or
 - (ii) the attorney general, if:
 - (A) the personal injury claim that results in an excess damages claim was asserted against the state; or
 - (B) the attorney general chooses to participate on behalf of a political subdivision, as provided in Subsection (9)(b).
 - (g) "Personal injury claim" means a claim for damages for personal injury that is subject to the operation of Subsection 63G-7-604(1)(a) or (d).
 - (h) "Responsible governmental entity" means:
 - (i) the political subdivision against which the personal injury claim was asserted, if an excess damages claim results from a personal injury claim against a political subdivision; or
 - (ii) the state, if an excess damages claim results from a personal injury claim against the state.
 - (i) "Special master list" means a list compiled under Subsection (7).
 - (j) "Statement of claim" means a statement detailing an excess damages claim.
 - (k) "Third party claim" means a personal injury claim that:
 - (i) arises out of the same underlying facts as the facts that provide the basis for an individual's personal injury claim against a governmental entity; and
 - (ii) the individual asserts against a person who the individual claims is also liable, in addition to the governmental entity, for the individual's personal injury claim.
- (2) An individual may seek payment of an excess damages claim by submitting a written statement of claim to the board of examiners after, but no later than 180 days after, as applicable:
- (a)
 - (i) the date of a final, nonappealable judgment in favor of the individual on a personal injury claim in an amount that would have exceeded the damages cap except for the operation of Subsection 63G-7-604(1)(a) or (d); or
 - (ii) the date of a damages cap settlement; or
 - (b) the date that all third party claims the individual has asserted are resolved by final, nonappealable judgment or settlement, if that date is later than the applicable date under Subsection (2)(a).
- (3) A statement of claim shall include:

- (a) a recitation of the facts and explanation of the evidence supporting the excess damages claim;
 - (b) the excess damages amount;
 - (c) if applicable, a list and description of each third party claim the individual has asserted and an explanation of the disposition of the third party claim, including the amount of any judgment or settlement and the amount actually recovered;
 - (d) if applicable, a summary of a damages cap settlement; and
 - (e) if applicable, the amount of a final judgment awarded to the claimant against the governmental entity with:
 - (i) the amount of the judgment before operation of Subsection 63G-7-604(1)(a) or (d); and
 - (ii) a description of each element of damages awarded and the amount awarded for each element.
- (4) A claimant shall submit with a statement of claim a copy of:
- (a) a final judgment in favor of the claimant on the claimant's personal injury claim that forms the basis of the claimant's excess damages claim, together with any findings of fact and conclusions of law entered by the court, if the claimant has recovered a judgment that exceeds the damages cap; or
 - (b) the agreement memorializing the damages cap settlement, if the claimant is asserting an excess damages claim following a damages cap settlement.
- (5) An excess damages claim may not include an amount recovered by a claimant from any source as compensation for damages for the claimant's personal injury claim.
- (6) A claimant with a personal injury claim that is subject to the aggregate limit under Subsection 63G-7-604(1)(d) may not submit a statement of claim under this section before the amount of the personal injury claim has been determined after application of Subsection 63G-7-604(1)(d).
- (7)
- (a) The board of examiners shall compile a list of at least five retired Utah judges to serve as a special master under this section.
 - (b) A retired judge included in the special master list shall meet qualifications established by the board of examiners.
- (8)
- (a) Except as provided in Subsection (8)(b), the board of examiners may require a claimant's excess damages claim to be submitted to a special master, as provided in this section, to make a recommendation concerning:
 - (i) the governmental entity's liability for the personal injury claim that forms the basis of the excess damages claim;
 - (ii) the amount of the claimant's damages and excess damages claim; or
 - (iii) both the governmental entity's liability and the amount of the claimant's damages and excess damages claim.
 - (b) The board of examiners may not require a claimant's excess damages claim to be submitted to a special master to the extent that the excess damages claim is based on a court judgment following a verdict by a trier of fact determining the governmental entity's liability or the amount of damages or both.
- (9)
- (a) A political subdivision that is the responsible governmental entity may choose whether to have an attorney representing the political subdivision participate in proceedings under this section to represent the interests opposing approval of the excess damages claim.

- (b) The attorney general may choose to participate in proceedings under this section to represent the interests opposing approval of the excess damages claim, whether or not the state is the responsible governmental entity.

(10)

- (a) If the board of examiners requires a claimant's excess damages claim to be submitted to a special master under this section, the claimant and the government attorney shall together select an individual from the special master list to act as special master.
- (b) If the claimant and the government attorney are unable to agree on an individual to act as special master, or if there is no government attorney participating in the proceedings before the board of examiners, the board of examiners shall randomly select an individual from the special master list to act as special master.

(11)

- (a) Within 20 days after appointment under Subsection (10), a special master shall:
 - (i) prepare a written budget of the special master's estimated fees and costs relating to the special master's anticipated services under this section; and
 - (ii) provide the budget to the claimant.
- (b) Within 20 days after receiving the special master's budget under Subsection (11)(a), the claimant shall:
 - (i) approve or reject the special master's budget; and
 - (ii) notify the board of examiners in writing of the approval or rejection.
- (c) If the claimant rejects the special master's budget, the claimant's excess damages claim is considered withdrawn.
- (d) If the claimant approves the special master's budget, the claimant shall pay all fees and costs of the special master in a special master proceeding under this section.

(12) Within 30 days after the approval of a special master's budget, the claimant shall provide the special master a written statement that includes:

(a)

- (i) a list of the name and last known address of each health care provider that has provided health care services to the claimant at any time during the period beginning five years before the event giving rise to the claimant's personal injury claim and ending on the date that the claimant submits the written statement;
- (ii) a description of the health care services provided by each health care provider listed in Subsection (12)(a)(i); and
- (iii) a statement describing and explaining any health care services described under Subsection (12)(a)(ii) that the claimant claims are immaterial to the claimant's personal injury claim;

(b)

- (i) a list of the name and last known address of each health care insurer or other entity to which a health care or other similar benefit claim has been submitted on the claimant's behalf at any time during the period beginning five years before the event giving rise to the claimant's personal injury claim and ending on the date that the claimant submits the written statement;
- (ii) a description of the health care or other similar benefits claimed under claims submitted to health care insurers or other entities listed under Subsection (12)(b)(i); and
- (iii) a statement describing and explaining any health care or other similar benefit described under Subsection (12)(b)(ii) that the claimant claims is immaterial to the claimant's personal injury claim;

- (c) a list of the name and address of each employer that employed the claimant at any time during the period beginning five years before the event giving rise to the claimant's personal injury claim and ending on the date that the claimant submits the written statement, if the

- claimant's personal injury claim includes a claim for lost wages or diminished earning capacity;
- (d) a list of the name and address of each state or federal entity holding a statutory lien on any recovery obtained by the claimant through the claimant's personal injury claim; and
 - (e) a statement as to whether the claimant has received any Medicare or Medicaid benefits and, if so, a description of those benefits, including the amount.
- (13) The claimant shall submit with the statement required under Subsection (12):
- (a) a copy of all documentary evidence supporting the claimant's excess damages claim; and
 - (b) a signed authorization from the claimant allowing the special master to obtain all documents, including any billing statements, relevant to the claimant's excess damages claim from each person listed under Subsections (12)(a)(i), (b)(i), and (c).
- (14) The special master:
- (a) shall objectively consider evidence related to the claimant's excess damages claim;
 - (b) may hold a hearing in connection with the special master recommendation regarding the excess damages claim;
 - (c) may request or allow a responsible governmental entity or government attorney voluntarily to provide information or argument to help the special master understand the factors weighing against an excess damages claim; and
 - (d) after considering the relevant evidence, shall make a recommendation concerning, as directed by the board of examiners:
 - (i) the governmental entity's liability for the personal injury claim that forms the basis of the claimant's excess damages claim;
 - (ii) the amount of the excess damages claim; or
 - (iii) both the governmental entity's liability and the amount of the claimant's damages and excess damages claim.
- (15)
- (a) Within 30 days after a hearing under Subsection (14)(b) or, if no hearing is held, after the special master's determination not to hold a hearing, the special master shall:
 - (i) prepare a written recommendation, including a brief, informal discussion of the factual and legal basis for the recommendation; and
 - (ii) deliver a copy of the written recommendation to the claimant, the attorney general, and the board of examiners.
 - (b) A written recommendation under Subsection (15)(a) may, but need not, contain findings of fact and conclusions of law.

Enacted by Chapter 229, 2019 General Session

63G-9-303 Meeting to examine claims -- Notice of meeting.

- (1) At least 60 days preceding the annual general session of the Legislature, the board shall hold a session for the purpose of examining the claims referred to in Section 63G-9-302, and may adjourn from time to time until the work is completed.
- (2) The board shall cause notice of such meeting or meetings to be published on the Utah Public Notice Website created in Section 63A-16-601.

Amended by Chapter 84, 2021 General Session

Amended by Chapter 344, 2021 General Session

63G-9-304 Adjustment of claims -- Recommendations to Executive Appropriations Committee.

- (1) The board shall, at the time designated, proceed to examine and adjust all claims referred to in Section 63G-9-302, and may hear evidence in support of or against the claims, and shall report to the Executive Appropriations Committee the facts and recommendations concerning the claims as the board considers proper.
- (2) In making its recommendations, the board may state and use any official or personal knowledge which any member of the board may have touching the claims.
- (3) The board may not pass upon or send to the Executive Appropriations Committee any claim for which the state or a political subdivision would not otherwise be liable were it not for its sovereign immunity.
- (4) Notwithstanding Subsection (3), claims wherein the state or a political subdivision would be liable, were it not for its sovereign immunity, whether recommended by the board for approval or disapproval, shall be reported by the board to the Legislature with appropriate findings and recommendations as provided in this section.

Amended by Chapter 151, 2017 General Session

63G-9-305 Publication of abstract of claims allowed and rejected.

The board must make up its report and recommendations at least 30 days before the meeting of the Legislature; and a brief abstract of the report, showing the claims rejected, and those allowed and the amounts thereof, must be published in a newspaper published at the seat of government before the meeting of the Legislature for such time as the board may prescribe.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-9-306 Reconsideration of rejected claims.

The board shall not entertain for a third time a demand against the state or a political subdivision once rejected by it or by the Legislature, unless the facts or reasons are presented to the board as in actions between private parties would furnish sufficient ground for granting a new trial.

Renumbered and Amended by Chapter 382, 2008 General Session

**Part 4
Appeal of Claim Reviews**

63G-9-401 Appeal to Legislature.

Any person interested who is aggrieved by the disapproval of a claim by the board may appeal from its decision to the Legislature by filing with the board a notice thereof, and upon the receipt of such notice the board must transmit the demand and all the papers accompanying the same, with a statement of the evidence taken before it, to the Legislature.

Renumbered and Amended by Chapter 382, 2008 General Session

Chapter 10 State Settlement Agreements Act

Part 1 General Provisions

63G-10-101 Title.

This chapter is known as the "State Settlement Agreements Act."

Enacted by Chapter 382, 2008 General Session

63G-10-102 Definitions.

As used in this chapter:

- (1)
 - (a) "Action settlement agreement" includes a stipulation, consent decree, settlement agreement, or any other legally binding document or representation that resolves a threatened or pending lawsuit between the state and another party by requiring the state to take legally binding action.
 - (b) "Action settlement agreement" includes stipulations, consent decrees, settlement agreements, and other legally binding documents or representations resolving a dispute between the state and another party when the state is required to pay money and required to take legally binding action.
 - (c) "Action settlement agreement" does not include:
 - (i) the internal process established by the Department of Transportation to resolve construction contract claims;
 - (ii) any resolution of an employment dispute or claim made by an employee of the state of Utah against the state as employer;
 - (iii) adjudicative orders issued by the State Tax Commission, the Public Service Commission, the Labor Commission, or the Department of Workforce Services; or
 - (iv) the settlement of disputes arising from audits, defaults, or breaches of permits, contracts of sale, easements, or leases by the School and Institutional Trust Lands Administration.
- (2)
 - (a) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.
 - (b) "Agency" includes the legislative branch, the judicial branch, the attorney general's office, the State Board of Education, the Utah Board of Higher Education, the institutional councils of each higher education institution, and each higher education institution.
- (3)
 - (a) "Financial settlement agreement" includes a stipulation, consent decree, settlement agreement, and any other legally binding document or representation that resolves a dispute between the state and another party exclusively by requiring the payment of money from one party to the other.
 - (b) "Financial settlement agreement" does not include:
 - (i) agreements made under the internal process established by the Department of Transportation to resolve construction contract claims;

- (ii) adjudicative orders issued by the State Tax Commission, Public Service Commission, Labor Commission, or the Department of Workforce Services;
 - (iii) the settlement of disputes arising from audits, defaults, or breaches of permits, contracts of sale, easements, or leases by the School and Institutional Trust Lands Administration; or
 - (iv) agreements made under the internal processes established by the Division of Facilities Construction and Management or by law to resolve construction contract claims made against the state by contractors or subcontractors.
- (4) "Government entities" means the state and its political subdivisions.
- (5) "Settlement agreement report" means a report that:
- (a) states the total amount of the settlement;
 - (b) states the payer of the settlement;
 - (c) states the recipient of the payment;
 - (d) summarizes the circumstances related to the settlement; and
 - (e) contains a copy of the settlement agreement, unless the agreement is not permitted to be disclosed due to a court order or other legal requirement.

Amended by Chapter 535, 2023 General Session

63G-10-103 Notice of voidableness of settlement agreements.

- (1) Each action settlement agreement and each financial settlement agreement executed in violation of this chapter is voidable by the governor or the Legislature as provided in this chapter.
- (2)
- (a) When seeking approval of an action settlement agreement or a financial settlement agreement under this chapter, upon request the attorney general shall provide to the approving person any documents or information relevant to the recommended settlement.
 - (b) Information and documents shared under this section are governed by Subsection 67-5-17(6).

Repealed and Re-enacted by Chapter 509, 2024 General Session

Part 2

Financial Settlement Agreements

63G-10-201 Governor to approve financial settlement agreements.

- (1) Before legally binding the state by executing a financial settlement agreement that might cost government entities more than \$250,000 to implement, an agency shall submit the proposed financial settlement agreement to the governor for the governor's approval or rejection.
- (2) The governor shall approve or reject each financial settlement agreement.
- (3)
- (a) If the governor approves the financial settlement agreement, the agency may execute the agreement.
 - (b) If the governor rejects the financial settlement agreement, the agency may not execute the agreement.
- (4) If an agency executes a financial settlement agreement without obtaining the governor's approval under this section, the governor may issue an executive order declaring the settlement agreement void.

- (5) An agency executing an agreement under this section shall give notice of the settlement to the Legislative Management Committee by sending a settlement agreement report to the president of the Senate, the speaker of the House of Representatives, and the director of the Office of Legislative Research and General Counsel within three business days of executing the agreement.

Amended by Chapter 535, 2023 General Session

63G-10-202 Legislative review and approval of financial settlement agreements.

- (1)
- (a) Before legally binding the state by executing a financial settlement agreement that might cost government entities more than \$1,000,000 to implement, an agency shall:
 - (i) submit the proposed financial settlement agreement to the governor for the governor's approval or rejection as required by Section 63G-10-201; and
 - (ii) if the governor approves the financial settlement agreement, submit the financial settlement agreement to the Legislative Management Committee for its review and recommendations.
 - (b) The Legislative Management Committee shall review the financial settlement agreement and may:
 - (i) recommend that the agency execute the financial settlement agreement;
 - (ii) recommend that the agency reject the financial settlement agreement; or
 - (iii) recommend to the governor that the governor call a special session of the Legislature to review and approve or reject the financial settlement agreement.
- (2)
- (a) Before legally binding the state by executing a financial settlement agreement that might cost government entities more than \$2,000,000 to implement, an agency shall:
 - (i) upon initiation of negotiations that an agency reasonably believes to have the potential to lead to a settlement agreement:
 - (A) notify the Legislature's general counsel that negotiations have commenced;
 - (B) continue to keep the Legislature's general counsel informed of material developments in the negotiation process; and
 - (C) permit the Legislature's general counsel to attend the negotiations;
 - (ii) submit the proposed financial settlement agreement to the governor for the governor's approval or rejection as required by Section 63G-10-201; and
 - (iii) if the governor approves the financial settlement agreement, submit the financial settlement agreement to the Legislature for its approval in an annual general session or a special session.
 - (b)
 - (i) If the Legislature approves the financial settlement agreement, the agency may execute the agreement.
 - (ii) If the Legislature rejects the financial settlement agreement, the agency may not execute the agreement.
 - (c) If an agency executes a financial settlement agreement without obtaining the Legislature's approval under this Subsection (2):
 - (i) the governor may issue an executive order declaring the settlement agreement void; or
 - (ii) the Legislature may pass a joint resolution declaring the settlement agreement void.

Amended by Chapter 535, 2023 General Session

Part 3

Action Settlement Agreements

63G-10-301 Cost evaluation of action settlement agreements.

- (1) Before legally binding the state to an action settlement agreement that might cost the state a total of \$250,000 or more to implement, inclusive of the cost of the required action and any required monetary payment, an agency shall estimate the cost of implementing the action settlement agreement and submit that cost estimate to the governor and the Legislative Management Committee.
- (2) The Legislative Management Committee may:
 - (a) direct its staff to make an independent cost estimate of the cost of implementing the action settlement agreement; and
 - (b) affirmatively adopt a cost estimate as the benchmark for determining which authorizations established by this part are necessary.

Amended by Chapter 509, 2024 General Session

63G-10-302 Governor to approve action settlement agreements.

- (1) Before legally binding the state by executing an action settlement agreement that might cost government entities more than \$250,000 to implement, inclusive of the cost of the required action and any required monetary payment, an agency shall submit the proposed settlement agreement, including all terms material to the settlement, to the governor for the governor's approval or rejection.
- (2) The governor shall approve or reject each action settlement agreement.
- (3)
 - (a) If the governor approves the action settlement agreement, the agency may execute the agreement.
 - (b) If the governor rejects the action settlement agreement, the agency may not execute the agreement.
- (4) If an agency executes an action settlement agreement without obtaining the governor's approval under this section, the governor may issue an executive order declaring the settlement agreement void.
- (5) An agency executing an agreement under this section shall give notice of the settlement to the Legislative Management Committee by sending a settlement agreement report to the president of the Senate, the speaker of the House of Representatives, and the director of the Office of Legislative Research and General Counsel within three business days of executing the agreement.

Amended by Chapter 509, 2024 General Session

63G-10-303 Legislative review and approval of action settlement agreements.

- (1)
 - (a) Before legally binding the state by executing an action settlement agreement that might cost government entities more than \$1,000,000 to implement, inclusive of the cost of the required action and any required monetary payment, an agency shall:

- (i) submit the proposed action settlement agreement, including all terms that are material to the settlement, to the governor for the governor's approval or rejection as required by Section 63G-10-302; and
- (ii) if the governor approves the action settlement agreement, submit the action settlement agreement to the Legislative Management Committee for its review and recommendations.
- (b) The Legislative Management Committee shall review the action settlement agreement and may:
 - (i) recommend that the agency execute the settlement agreement;
 - (ii) recommend that the agency reject the settlement agreement; or
 - (iii) recommend to the governor that the governor call a special session of the Legislature to review and approve or reject the settlement agreement.
- (2)
 - (a) Before legally binding the state by executing an action settlement agreement that might cost government entities more than \$2,000,000 to implement, an agency shall:
 - (i) submit the proposed action settlement agreement, including all terms that are material to the settlement, to the governor for the governor's approval or rejection as required by Section 63G-10-302; and
 - (ii) if the governor approves the action settlement agreement, submit the action settlement agreement to the Legislature for its approval in an annual general session or a special session.
 - (b)
 - (i) If the Legislature approves the action settlement agreement, the agency may execute the agreement.
 - (ii) If the Legislature rejects the action settlement agreement, the agency may not execute the agreement.
 - (c) If an agency executes an action settlement agreement without obtaining the Legislature's approval under this Subsection (2):
 - (i) the governor may issue an executive order declaring the action settlement agreement void; or
 - (ii) the Legislature may pass a joint resolution declaring the action settlement agreement void.

Amended by Chapter 509, 2024 General Session

Part 4

Department of Transportation Settlement Agreements

63G-10-401 Condemnation, inverse condemnation settlements involving the Department of Transportation.

- (1) Notwithstanding the provisions of this chapter, the Department of Transportation need not obtain the approval of the governor or the Legislature for financial or action settlement agreements that resolve condemnation or inverse condemnation cases.
- (2) Financial settlement agreements involving condemnation or inverse condemnation cases for \$1,000,000 to \$2,000,000 over the Department of Transportation's original appraisal shall be presented to the Transportation Commission for approval or rejection.
- (3)

- (a) Financial settlement agreements involving condemnation or inverse condemnation cases for more than \$2,000,000 over the Department of Transportation's original appraisal and all action settlement agreements that resolve condemnation or inverse condemnation cases shall be presented:
 - (i) to the Transportation Commission for approval or rejection; and
 - (ii) if the financial or action settlement agreement is approved by the Transportation Commission, to the Legislative Management Committee.
 - (b) The Legislative Management Committee may recommend approval or rejection of the financial or action settlement agreement.
- (4)
- (a) The Department of Transportation may not enter into a financial settlement agreement that resolves a condemnation or inverse condemnation case and requires payment of \$1,000,000 to \$2,000,000 over the Department of Transportation's original appraisal until the Transportation Commission has approved the agreement.
 - (b) The Department of Transportation may not enter into a financial settlement agreement that resolves a condemnation or inverse condemnation case and requires payment of more than \$2,000,000 over the Department of Transportation's original appraisal or enter into an action settlement agreement that resolves a condemnation or inverse condemnation case until:
 - (i) the Transportation Commission has approved the agreement; and
 - (ii) the Legislative Management Committee has reviewed the agreement.
- (5) The Department of Transportation shall, for each settlement agreement approved under this section for an amount greater than \$1,000,000 but less than \$2,000,000, give notice to the Legislative Management Committee by sending a settlement agreement report to the president of the Senate, the speaker of the House of Representatives, and the director of the Office of Legislative Research and General Counsel within three business days of executing the agreement.

Amended by Chapter 535, 2023 General Session

63G-10-402 Department of Transportation construction contract claim settlement agreement approval and review.

- (1) As used in this section:
- (a) "Claims review board" means a committee established by the department to hear unresolved claims and make recommendations for settlement to the deputy director of the department.
 - (b) "Department" means the Department of Transportation created in Section 72-1-201.
 - (c) "Settlement agreement" includes stipulations, consent decrees, settlement agreements, or other legally binding documents or representations resolving a dispute between the department and another party when the department is required to pay money or required to take legally binding action.
- (2) The department shall obtain the approval of the Transportation Commission or the governor or review by the Legislative Management Committee of a settlement agreement that involves a construction contract claim in accordance with this section.
- (3) A construction contract claim settlement agreement that is being recommended by the department's claims review board that might cost government entities more than \$250,000 to implement shall be presented to the Transportation Commission for approval or rejection.
- (4) A construction contract claim settlement agreement that is being recommended by the department's claims review board that might cost government entities more than \$1,000,000 to implement shall be presented:

- (a) to the Transportation Commission for approval or rejection; and
 - (b) to the governor for approval or rejection.
- (5)
- (a) A construction contract claim settlement agreement that is being recommended by the department's claims review board that might cost government entities more than \$2,000,000 to implement shall be presented:
 - (i) to the Transportation Commission for approval or rejection;
 - (ii) to the governor for approval or rejection; and
 - (iii) if the construction contract claim settlement agreement is approved by the Transportation Commission and the governor, to the Legislative Management Committee.
 - (b) The Legislative Management Committee may recommend approval or rejection of the construction contract claim settlement agreement.
- (6)
- (a) The department may not enter into a construction contract claim settlement agreement that is being recommended by the department's claims review board that might cost government entities more than \$250,000 to implement until the Transportation Commission has approved the agreement.
 - (b) The department may not enter into a construction contract claim settlement agreement that is being recommended by the department's claims review board that might cost government entities more than \$1,000,000 to implement until the Transportation Commission and the governor have approved the agreement.
 - (c) The department may not enter into a construction contract claim settlement agreement that is being recommended by the department's claims review board that might cost government entities more than \$2,000,000 to implement until:
 - (i) the Transportation Commission has approved the agreement;
 - (ii) the governor has approved the agreement; and
 - (iii) the Legislative Management Committee has reviewed the agreement.
- (7) The department shall, for each settlement agreement approved under this section for an amount greater than \$250,000 but less than \$2,000,000, give notice to the Legislative Management Committee by sending a settlement agreement report to the president of the Senate, the speaker of the House of Representatives, and the director of the Office of Legislative Research and General Counsel within three business days of executing the agreement.

Amended by Chapter 535, 2023 General Session

63G-10-403 Department of Transportation bid or request for proposals protest settlement agreement approval and review.

- (1) As used in this section:
- (a) "Department" means the Department of Transportation created in Section 72-1-201.
 - (b) "Settlement agreement" includes stipulations, consent decrees, settlement agreements, or other legally binding documents or representations resolving a dispute between the department and another party when the department is required to pay money or required to take legally binding action.
- (2) The department shall obtain the approval of the Transportation Commission or the governor or review by the Legislative Management Committee of a settlement agreement that involves a bid or request for proposal protest in accordance with this section.

- (3) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602(8), that might cost government entities more than \$250,000 to implement shall be presented to the Transportation Commission for approval or rejection.
- (4) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602(8), that might cost government entities more than \$1,000,000 to implement shall be presented:
 - (a) to the Transportation Commission for approval or rejection; and
 - (b) to the governor for approval or rejection.
- (5)
 - (a) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602(8), that might cost government entities more than \$2,000,000 to implement shall be presented:
 - (i) to the Transportation Commission for approval or rejection;
 - (ii) to the governor for approval or rejection; and
 - (iii) if the settlement agreement is approved by the Transportation Commission and the governor, to the Legislative Management Committee.
 - (b) The Legislative Management Committee may recommend approval or rejection of the settlement agreement.
- (6)
 - (a) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602(8), that might cost government entities more than \$250,000 to implement until the Transportation Commission has approved the agreement.
 - (b) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602(8), that might cost government entities more than \$1,000,000 to implement until the Transportation Commission and the governor have approved the agreement.
 - (c) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602(8), that might cost government entities more than \$2,000,000 to implement until:
 - (i) the Transportation Commission has approved the agreement;
 - (ii) the governor has approved the agreement; and
 - (iii) the Legislative Management Committee has reviewed the agreement.
- (7) The department shall, for each settlement agreement approved under this section for an amount greater than \$250,000 but less than \$2,000,000, give notice to the Legislative Management Committee by sending a settlement agreement report to the president of the Senate, the speaker of the House of Representatives, and the director of the Office of Legislative Research and General Counsel within three business days of executing the agreement.

Amended by Chapter 535, 2023 General Session

Part 5
Risk Management Fund Settlement Agreements

63G-10-501 Definitions.

As used in this part:

- (1) "Executive director" means the individual appointed under Section 63A-1-105 as the executive director of the Department of Government Operations, created in Section 63A-1-104.
- (2) "Risk management fund" means the fund created in Section 63A-4-201.
- (3) "Risk manager" means the state risk manager appointed under Section 63A-4-101.5.
- (4) "Settlement amount" means the total cost to implement:
 - (a) an action settlement as defined in Section 63G-10-102, including the cost of the required action and any required monetary payment; or
 - (b) a financial settlement as defined in Section 63G-10-102.

Amended by Chapter 509, 2024 General Session

63G-10-502 Application of this part.

The authority required for the risk manager to settle a claim for which the risk management fund may be liable is governed exclusively by this part.

Enacted by Chapter 355, 2015 General Session

63G-10-503 Risk manager's authority to settle a claim -- Additional approvals required.

- (1) The risk manager may compromise and settle any claim for which the risk management fund may be liable:
 - (a) if the settlement amount is \$500,000 or less, on the risk manager's own authority;
 - (b) if the settlement amount is more than \$500,000 but not more than \$1,000,000, upon the approval of the attorney general, or the attorney general's representative, and the executive director;
 - (c) if the settlement amount is more than \$1,000,000 but not more than \$1,500,000, upon the governor's approval after receiving approval under Subsection (1)(b);
 - (d) if the settlement amount is more than \$1,500,000 but not more than \$2,000,000, upon the Legislative Management Committee's approval after receiving approval under Subsections (1)(b) and (c); and
 - (e) if the settlement amount is more than \$2,000,000, upon the Legislature's approval after receiving approval under Subsections (1)(b), (c), and (d).
- (2) When seeking approval from a person under Subsection (1), the risk manager shall provide the person a list of each material term in the proposed settlement agreement.
- (3)
 - (a) The risk manager shall, upon initiation of negotiations that the risk manager reasonably believes to have the potential to lead to a settlement requiring approval under Subsection (1)(d) or (e):
 - (i) notify the Legislature's general counsel that negotiations have commenced;
 - (ii) continue to keep the Legislature's general counsel informed of material developments in the negotiation process; and
 - (iii) permit the Legislature's general counsel to attend negotiations.
 - (b) The information that the risk manager shall provide to the Legislature's general counsel under Subsection (3)(a) includes:
 - (i) the nature of the claim that is the subject of the settlement negotiations;
 - (ii) the known facts that support the claim and the known facts that controvert the claim; and
 - (iii) the risk manager's assessment of the potential liability under the claim.

- (c) A document, paper, electronic data, communication, or other material that the risk manager provides to legislative general counsel in the discharge of the risk manager's responsibility under this Subsection (3) may not be considered to be a record, as defined in Section 63G-2-103.
- (d) Information provided by the risk manager to legislative general counsel under Subsection (3) (a) and a communication between the risk manager and legislative general counsel under Subsection (3)(a) shall be considered to be evidence that is subject to Rule 408 of the Utah Rules of Evidence to the fullest extent possible.
- (e) Subsections (3)(c) and (d) apply regardless of whether:
 - (i) the risk manager acts personally under this section or through counsel or another individual acting under the risk manager's direction; or
 - (ii) other individuals under the direction of legislative general counsel are involved in the process described in this section.
- (4) The risk manager shall, for each settlement agreement approved under this section for an amount greater than \$250,000 but less than \$1,500,000, give notice of the settlement to the Legislative Management Committee by sending a settlement agreement report to the president of the Senate, the speaker of the House of Representatives, and the director of the Office of Legislative Research and General Counsel within three business days of executing the agreement.

Amended by Chapter 509, 2024 General Session

Chapter 12

Utah Immigration Accountability and Enforcement Act

Part 1

General Provisions

63G-12-101 Title.

This chapter is known as the "Utah Immigration Accountability and Enforcement Act."

Enacted by Chapter 18, 2011 General Session

63G-12-102 Definitions.

As used in this chapter:

- (1) "Basic health insurance plan" means a health plan that is actuarially equivalent to a federally qualified high deductible health plan.
- (2) "Department" means the Department of Public Safety created in Section 53-1-103.
- (3) "Employee" means an individual employed by an employer under a contract for hire.
- (4) "Employer" means a person who has one or more employees employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written.
- (5) "E-verify program" means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C. Sec. 1324a, known as the e-verify program.

- (6) "Family member" means for an undocumented individual:
 - (a) a member of the undocumented individual's immediate family;
 - (b) the undocumented individual's grandparent;
 - (c) the undocumented individual's sibling;
 - (d) the undocumented individual's grandchild;
 - (e) the undocumented individual's nephew;
 - (f) the undocumented individual's niece;
 - (g) a spouse of an individual described in this Subsection (6); or
 - (h) an individual who is similar to one listed in this Subsection (6).
- (7) "Federal SAVE program" means the Systematic Alien Verification for Entitlements Program operated by the United States Department of Homeland Security or an equivalent program designated by the Department of Homeland Security.
- (8) "Guest worker" means an undocumented individual who holds a guest worker permit.
- (9) "Guest worker permit" means a permit issued in accordance with Section 63G-12-207 to an undocumented individual who meets the eligibility criteria of Section 63G-12-205.
- (10) "Immediate family" means for an undocumented individual:
 - (a) the undocumented individual's spouse; or
 - (b) a child of the undocumented individual if the child is:
 - (i) under 21 years old; and
 - (ii) unmarried.
- (11) "Immediate family permit" means a permit issued in accordance with Section 63G-12-207 to an undocumented individual who meets the eligibility criteria of Section 63G-12-206.
- (12) "Permit" means a permit issued under Part 2, Guest Worker Program, and includes:
 - (a) a guest worker permit; and
 - (b) an immediate family permit.
- (13) "Permit holder" means an undocumented individual who holds a permit.
- (14) "Private employer" means an employer who is not the federal government or a public employer.
- (15) "Program" means the Guest Worker Program described in Section 63G-12-201.
- (16) "Program start date" means the day on which the department is required to implement the program under Subsection 63G-12-202(3).
- (17) "Public employer" means an employer that is:
 - (a) the state of Utah or any administrative subunit of the state;
 - (b) a state institution of higher education, as defined in Section 53B-3-102;
 - (c) a political subdivision of the state including a county, city, town, school district, special district, or special service district; or
 - (d) an administrative subunit of a political subdivision.
- (18) "Relevant contact information" means the following for an undocumented individual:
 - (a) the undocumented individual's name;
 - (b) the undocumented individual's residential address;
 - (c) the undocumented individual's residential telephone number;
 - (d) the undocumented individual's personal email address;
 - (e) the name of the person with whom the undocumented individual has a contract for hire;
 - (f) the name of the contact person for the person listed in Subsection (18)(e);
 - (g) the address of the person listed in Subsection (18)(e);
 - (h) the telephone number for the person listed in Subsection (18)(e);
 - (i) the names of the undocumented individual's immediate family members;
 - (j) the names of the family members who reside with the undocumented individual; and

- (k) any other information required by the department by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act.
- (19) "Restricted account" means the Immigration Act Restricted Account created in Section 63G-12-103.
- (20) "Serious felony" means a felony under:
 - (a) Title 76, Chapter 5, Offenses Against the Individual;
 - (b) Title 76, Chapter 5b, Sexual Exploitation Act;
 - (c) Title 76, Chapter 6, Offenses Against Property;
 - (d) Title 76, Chapter 7, Offenses Against the Family;
 - (e) Title 76, Chapter 8, Offenses Against the Administration of Government;
 - (f) Title 76, Chapter 9, Offenses Against Public Order and Decency; and
 - (g) Title 76, Chapter 10, Offenses Against Public Health, Safety, Welfare, and Morals.
- (21)
 - (a) "Status verification system" means an electronic system operated by the federal government, through which an authorized official of a state agency or a political subdivision of the state may inquire by exercise of authority delegated pursuant to 8 U.S.C. Sec. 1373, to verify the citizenship or immigration status of an individual within the jurisdiction of the agency or political subdivision for a purpose authorized under this section.
 - (b) "Status verification system" includes:
 - (i) the e-verify program;
 - (ii) an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986;
 - (iii) the Social Security Number Verification Service or similar online verification process implemented by the United States Social Security Administration; or
 - (iv) an independent third-party system with an equal or higher degree of reliability as the programs, systems, or processes described in Subsection (21)(b)(i), (ii), or (iii).
- (22) "Unauthorized alien" is as defined in 8 U.S.C. Sec. 1324a(h)(3).
- (23) "Undocumented individual" means an individual who:
 - (a) lives or works in the state; and
 - (b) is not in compliance with the Immigration and Nationality Act, 8 U.S.C. Sec. 1101 et seq. with regard to presence in the United States.
- (24) "U-verify program" means the verification procedure developed by the department in accordance with Section 63G-12-210.

Amended by Chapter 16, 2023 General Session

63G-12-103 Immigration Act Restricted Account.

- (1) There is created a restricted account within the General Fund known as the "Immigration Act Restricted Account."
- (2)
 - (a) The restricted account shall consist of:
 - (i) a fee collected under this chapter;
 - (ii) a fine collected under Section 63G-12-207;
 - (iii) civil penalties imposed under Section 63G-12-211 or 63G-12-306;
 - (iv) money appropriated to the restricted account by the Legislature; and
 - (v) interest earned on the restricted account.
 - (b) The restricted account shall earn interest.

- (3) The Legislature may appropriate money from the restricted account to:
- (a) the department and the Office of the Governor to pay the costs associated with the implementation of Section 63G-12-202;
 - (b) the department to administer this chapter;
 - (c) the State Tax Commission for costs associated with implementing Section 63G-12-203;
 - (d) the attorney general for costs associated with:
 - (i) litigation related to this chapter;
 - (ii) a multi-agency strike force created under Section 67-5-22.7; or
 - (iii) a memorandum of understanding executed under Section 67-5-28; and
 - (e) the Identity Theft Restricted Account created in Section 67-5-22.7.

Amended by Chapter 369, 2012 General Session

63G-12-104 Determining immigration status -- Transfer or maintenance of information.

Except as limited by federal law and this chapter, any state or local governmental agency is not restricted or prohibited in any way from sending, receiving, or maintaining information related to the lawful or unlawful immigration status of an individual by communicating with any federal, state, or local governmental entity for any lawful purpose, including:

- (1) determining an individual's eligibility for any public benefit, service, or license provided by any federal agency, by this state, or by a political subdivision of this state;
- (2) confirming an individual's claim of residence or domicile if determination is required by state law or a judicial order issued pursuant to a civil or criminal proceeding in this state;
- (3) if the individual is an alien, determining if the individual is in compliance with the federal registration laws under 8 U.S.C. Sec. 1301 through 1306; or
- (4) a valid request for verification of the citizenship or immigration status of any person pursuant to 8 U.S.C. Sec. 1373.

Enacted by Chapter 18, 2011 General Session

63G-12-105 Implementation to be consistent with federal law and civil rights.

A state or local agency shall implement this chapter in a manner that:

- (1) is consistent with federal laws that regulate immigration;
- (2) protects the civil rights of all persons; and
- (3) respects the privileges and immunities of United States citizens.

Enacted by Chapter 18, 2011 General Session

63G-12-106 Severability.

- (1) If a provision of Part 2, Guest Worker Program, or the application of a provision to a person or circumstance is held invalid, the remainder of this chapter may not be given effect without the invalid provision or application so that the provisions of this chapter are not severable.
- (2) The following provisions are severable from this chapter:
 - (a) Title 76, Chapter 9, Part 10, The Illegal Immigration Enforcement Act;
 - (b) Section 76-10-2901; and
 - (c) Section 77-7-2.

Enacted by Chapter 18, 2011 General Session

Part 2 Guest Worker Program

63G-12-201 Department to create program.

- (1) The department shall administer a program known as the "Guest Worker Program" created by this part. Under this program, the department shall:
 - (a) seek one or more waivers, exemptions, or authorizations to implement the program as provided in Section 63G-12-202;
 - (b) issue a permit as provided in Section 63G-12-207;
 - (c) establish fees in accordance with Section 63J-1-504 for a filing or service required by this part;
 - (d) take action under Section 63G-12-211; and
 - (e) report annually to the governor and the Legislature.
- (2) The department may make rules in accordance with Chapter 3, Utah Administrative Rulemaking Act, to the extent expressly provided for in this part.
- (3) In implementing this part, the department shall cooperate with other state agencies to minimize any duplication in databases or services required under this part.

Enacted by Chapter 18, 2011 General Session

63G-12-202 Federal waivers, exemptions, or authorizations -- Implementation without waiver, exemption, or authorization.

- (1) The department, under the direction of the governor, shall seek one or more federal waivers, exemptions, or authorizations to implement the program.
- (2) The governor shall actively participate in the effort to obtain one or more federal waivers, exemptions, or authorizations under this section.
- (3) The department shall implement the program the sooner of:
 - (a) 120 days after the day on which the governor finds that the state has the one or more federal waivers, exemptions, or authorizations needed to implement the program; or
 - (b) July 1, 2027.

Amended by Chapter 81, 2016 General Session

63G-12-203 Coordination with other federal or state laws or programs.

- (1) To the extent feasible, the department shall coordinate the implementation of the program with other existing state and federal laws that relate to immigration and labor, including laws pertaining to obtaining the privilege to drive and to report citizenship status.
- (2)
 - (a) If a permit holder is not issued a Social Security number, the State Tax Commission shall, by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, provide a means for a person who receives services from a permit holder to withhold from compensation paid to the permit holder an amount to be determined by State Tax Commission rule that, as closely as possible, equals the income taxes that would be imposed by state law if the permit holder were an employee with a Social Security number.
 - (b) If a waiver, exemption, or authorization described in Section 63G-12-202 provides for the issuance of a Social Security number to a permit holder, a person who receives services from

a permit holder is required to withhold from compensation as provided in Title 59, Chapter 10, Part 4, Withholding of Tax.

- (c) The rules described in Subsection (2)(a) shall be substantially similar to Title 59, Chapter 10, Part 4, Withholding of Tax.
- (d) To the extent feasible and consistent with a waiver, exemption, or authority entered into under Section 63G-12-202, the State Tax Commission shall work with the applicable federal government agencies to ensure that the withholding provided for under this Subsection (2) is compatible with a federal process by which employment taxes are collected that would be imposed under federal law if a permit holder were an employee with a Social Security number.
- (e)
 - (i) The State Tax Commission shall impose a fee on a person who hires a permit holder as an employee in accordance with this Subsection (2)(e):
 - (A) if as of the program start date the federal government does not collect or provide for the withholding of federal employment taxes;
 - (B) beginning the first day of the calendar quarter immediately following the program start date; and
 - (C) ending the last day of the calendar quarter in which the federal government begins to collect or provide for the withholding of federal employment taxes.
 - (ii) The State Tax Commission shall set the fee equal to the amount that, as closely as possible, equals the federal employment taxes that would be imposed by federal law if the permit holder were hired as an employee with a Social Security number.
 - (iii) The State Tax Commission shall collect the fee in the same manner that it collects state income taxes withheld in accordance with this Subsection (2).
 - (iv) The State Tax Commission may make rules in accordance with Chapter 3, Utah Administrative Rulemaking Act, to establish the procedures for the collection of the fee.
 - (v) The State Tax Commission shall deposit the fee into the restricted account.
 - (vi) The State Tax Commission may have access to a record of the department made under Section 63G-12-210 to the extent necessary to impose a fee under this Subsection (2)(e).
- (3) The department shall facilitate the use in this state of other employer based work programs that meet the needs of Utah employers by using workers who are not working in Utah and who are not United States citizens. Nothing in this part prevents a person from using an employer based work program described in this Subsection (3) that exists under the auspices of a foreign government in cooperation with the United States government.
- (4) A permit holder is not eligible for unemployment compensation.

Enacted by Chapter 18, 2011 General Session

63G-12-204 Obtaining a permit -- Uses of permit.

- (1) An undocumented individual shall obtain a permit:
 - (a) before providing services to a person in this state under a contract for hire; or
 - (b) in accordance with Subsection (2), by no later than 30 days from the day on which the undocumented individual enters into a contract for hire.
- (2)
 - (a) By rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, the department shall provide a procedure under which a person may hire an undocumented individual who does not hold a permit pending the undocumented individual obtaining a permit within 30 days of the day on which the undocumented individual is hired to provide services.

- (b) An undocumented individual may not provide services under a contract for hire to a person for more than 30 days during a two-year calendar period without obtaining a permit as provided under this part.
- (3) Subject to Subsection (4), a permit is considered an identification document for purposes of Section 63G-12-401, and may be used as identification or proof of the permit holder's age for any state or local government required purpose.
- (4) An undocumented individual may not use a permit:
 - (a) to establish entitlement to a federal, state, or local benefit as described in Section 63G-12-402; or
 - (b) to obtain work or provide services in a state other than Utah.

Enacted by Chapter 18, 2011 General Session

63G-12-205 Eligibility criteria to obtain and maintain a guest worker permit.

- (1) To be eligible to obtain or maintain a guest worker permit, an undocumented individual shall:
 - (a)
 - (i) be 18 years of age or older; or
 - (ii) if younger than 18 years of age, have the permission of a parent or guardian;
 - (b) live in Utah;
 - (c) have worked or lived in Utah before May 10, 2011;
 - (d) provide relevant contact information and regularly update the relevant contact information in a manner required by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act;
 - (e) provide documentation of a contract for hire under which the undocumented individual begins to provide services within at least 30 days of the day on which the undocumented individual obtains the permit;
 - (f)
 - (i) agree to a criminal background check described in Subsection (3); and
 - (ii) not have been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its equivalent to a serious felony;
 - (g) provide evidence satisfactory to the department that the person would not be inadmissible for public health grounds under 8 U.S.C. Sec. 1182;
 - (h)
 - (i) be covered by a basic health insurance plan; or
 - (ii) provide evidence satisfactory to the department that the undocumented individual has no medical debt that is past due and agrees to have no medical debt that is past due during the term of the permit; and
 - (i)
 - (i) hold a driving privilege card issued in accordance with Section 53-3-207; or
 - (ii) provide evidence satisfactory to the department that the undocumented individual will not drive a motor vehicle in the state.
- (2) The department may by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, provide for the documentation required to establish eligibility under Subsection (1). When making a rule under this section, the department shall use federal standards as a guideline to avoid unnecessary duplication and additional costs.
- (3)

- (a) The department shall require an undocumented individual applying for a guest worker permit, or renewing a guest worker permit, to submit to a criminal background check as a condition of receiving or renewing the guest worker permit.
- (b) An undocumented individual required to submit to a criminal background check under Subsection (3)(a), shall:
 - (i) submit a fingerprint card in a form acceptable to the department; and
 - (ii) consent to a fingerprint background check by:
 - (A) the Utah Bureau of Criminal Identification; and
 - (B) the Federal Bureau of Investigation, including the secure communities program when possible.
- (c) For an undocumented individual who submits a fingerprint card and consents to a fingerprint background check under Subsection (3)(b), the department may request:
 - (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and
 - (ii) complete Federal Bureau of Investigation criminal background checks through the national criminal history system and secure communities program.
- (d) Information obtained by the department from the review of criminal history records received under this Subsection (3) shall be used by the department to determine eligibility to obtain a permit.
- (e) The department shall:
 - (i) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under this Subsection (3); and
 - (ii) in accordance with Section 63J-1-504, charge the undocumented individual applying for the permit a fee equal to the aggregate of the costs incurred by the department under this Subsection (3) and the amount paid under Subsection (3)(e)(i).

Enacted by Chapter 18, 2011 General Session

63G-12-206 Eligibility to obtain and maintain an immediate family permit.

To be eligible to obtain or maintain an immediate family permit, an undocumented individual shall:

- (1) live in Utah;
- (2) be a member of a guest worker's immediate family; and
- (3) provide relevant contact information and regularly update the relevant contact information in a manner required by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act.

Enacted by Chapter 18, 2011 General Session

63G-12-207 Application and renewal process.

- (1) The department may not issue a permit under this part until the program is implemented under Section 63G-12-202.
- (2) The department shall:
 - (a) create a permit that:
 - (i) is of impervious material that is resistant to wear or damage; and
 - (ii) minimizes the risk that the permit may be forged, falsified, or counterfeited; and
 - (b) ensure that a permit:

- (i) includes a photograph of the undocumented individual to whom the permit is issued;
 - (ii) prominently states the day on which the permit expires; and
 - (iii) prominently states the type of permit.
- (3) A permit expires two years from the day on which the department issues the permit.
- (4)
- (a) Before an undocumented individual may apply for an initial permit under this part the undocumented individual shall commit to pay a fine equal to:
 - (i) \$1,000, if the undocumented individual enters into the United States legally, but at the time of paying the fine is not in compliance with the Immigration and Nationality Act, 8 U.S.C. Sec. 1101 et seq. with regard to presence in the United States; or
 - (ii) \$2,500, if the undocumented individual enters into the United States illegally.
 - (b) The department by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, shall make rules that provide for:
 - (i) how an undocumented individual demonstrates a commitment to pay the fine required under Subsection (4)(a);
 - (ii) one or more payment plans that an undocumented individual may use to pay a fine required under Subsection (4)(a); and
 - (iii) the consequences for failure to pay the entire amount of a fine required under Subsection (4)(a).
- (5) After committing to pay the fine in accordance with Subsection (4), to apply for or renew a permit, an undocumented individual shall submit to the department, in a form acceptable under this part:
- (a) an application;
 - (b) documentation of meeting the criteria in Section 63G-12-205 or 63G-12-206;
 - (c) for a renewal, documentation of efforts to comply with Section 63G-12-209;
 - (d) a signed statement verifying the information in the application and documentation; and
 - (e) a fee established by the department in accordance with Section 63J-1-504.
- (6) If an undocumented individual submits a complete application under Subsection (5) and the department determines that the undocumented individual meets the criteria of Section 63G-12-205 or 63G-12-206, the department shall issue or renew:
- (a) a guest worker permit, if the undocumented individual qualifies under Section 63G-12-205; and
 - (b) an immediate family permit, if the undocumented individual qualifies under Section 63G-12-206.
- (7) An undocumented individual may appeal a denial of a permit under this section in accordance with Chapter 4, Administrative Procedures Act.
- (8)
- (a) If a waiver, exemption, or authorization provides for the following, in addition to the requirements of Subsection (5), for an application to be considered complete for purposes of Subsection (6) an undocumented individual applying for a guest worker permit shall:
 - (i) post a bond with the department in the amount of \$10,000 against which the department may bring an action for a violation of this part; or
 - (ii) provide written certification by the undocumented individual's country of origin in accordance with Subsection (8)(b) of a guarantee of compliance with this part.
 - (b)
 - (i) In accordance with Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules providing for what the department would consider being a "guarantee of compliance" by a country of origin for purposes of Subsection (8)(a).

- (ii) A rule made under this Subsection (8)(b) shall provide that the department may not accept a guarantee of compliance from a specific foreign country if the department determines a significant percentage of the guest workers who submit a guarantee of compliance from that foreign country cannot be located after or during the term of a guest worker permit.

Enacted by Chapter 18, 2011 General Session

63G-12-208 Conditions during permit term.

- (1) A permit holder shall continue to meet the eligibility criteria under Section 63G-12-205 or 63G-12-206 for the type of permit held by the permit holder.
- (2) A permit is automatically revoked if after issuance of the permit:
 - (a) the permit holder to whom it is issued is convicted of, pleads guilty to, pleads no contest to, pleads guilty in a similar manner to, or has resolved by diversion or its equivalent a serious felony;
 - (b) for a guest worker permit, the permit holder to whom it is issued does not provide services under a contract for hire for more than one year; or
 - (c) for an immediate family permit, the guest worker permit under which the immediate family member's permit is issued is revoked or expires under this part.

Enacted by Chapter 18, 2011 General Session

63G-12-209 Proficiency standards for English.

- (1) A permit holder shall in good faith use best efforts to become proficient in the English language at or above the equivalent to an intermediate level on a language proficiency assessment test used by the State Board of Education for purposes of secondary school students.
- (2) An undocumented individual shall pay the costs of complying with this section.

Amended by Chapter 144, 2016 General Session

63G-12-210 Verification of valid permit -- Protected status of information.

- (1)
 - (a) The department shall develop a verification procedure by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, for a person who hires a permit holder to verify with the department that the permit is valid as required by Section 63G-12-301.
 - (b) The verification procedure adopted under this Subsection (1) shall:
 - (i) be substantially similar to the employer requirements to verify federal employment status under the e-verify program; and
 - (ii) provide that an undocumented individual may appeal a determination that a permit is invalid in accordance with Chapter 4, Administrative Procedures Act.
- (2) Subject to Section 63G-12-212, a record under this part is a protected record under Chapter 2, Government Records Access and Management Act, except that a record may not be shared under Section 63G-2-206, unless:
 - (a) requested by the Office of Legislative Auditor General in accordance with Section 36-12-15;
 - (b) disclosed to the State Tax Commission as provided in Subsection 63G-12-203(2)(e)(vi); or
 - (c) disclosed to a federal government entity in accordance with this part or a waiver, exemption, or authorization described in Section 63G-12-202.
- (3) The state is not liable to any person for:
 - (a) the design, implementation, or operation of a verification procedure under this part;

- (b) the collection and disclosure of information as part of a verification procedure under this part;
or
- (c) the determination that a permit is invalid.

Enacted by Chapter 18, 2011 General Session

63G-12-211 Prohibited conduct -- Administrative penalties -- Criminal penalties.

- (1) A permit holder may not file for or receive unemployment benefits.
- (2) A person may not:
 - (a) furnish false or forged information or documentation in support of an application;
 - (b) alter the information on a permit;
 - (c) if the person is a guest worker, be reported absent from work for 10 consecutive days without the approval of the person who hires the guest worker;
 - (d) allow an individual to use a permit if the individual is not entitled to use the permit;
 - (e) display or represent that a permit is issued to an individual, if the permit is not issued to the individual;
 - (f) display a revoked permit as a valid permit;
 - (g) knowingly or with reckless disregard acquire, use, display, or transfer an item that purports to be a valid permit, but that is not a valid permit; or
 - (h) otherwise violate this part.
- (3) For a violation described in Subsections (1) and (2), the department may:
 - (a) suspend, limit, or revoke and repossess a permit;
 - (b) impose a civil penalty not to exceed \$750 for each violation; or
 - (c) take a combination of actions under this section.
- (4) A person is guilty of a class B misdemeanor if the person:
 - (a) furnishes false or forged information or documentation in support of an application; or
 - (b) alters the information on a permit.

Enacted by Chapter 18, 2011 General Session

63G-12-212 Sharing of information related to enforcement.

- (1) The department shall provide the notice described in Subsection (2), if the department determines that an undocumented individual:
 - (a) has the undocumented individual's permit revoked; or
 - (b) permits the undocumented individual's permit to expire and the department has reason to believe that the undocumented individual continues to reside in the state.
- (2)
 - (a) The department shall provide the notice required by Subsection (1) to:
 - (i) Utah's attorney general; and
 - (ii) United States Immigration and Customs Enforcement.
 - (b) The notice described in Subsection (2)(a) shall:
 - (i) include:
 - (A) the last known address of the undocumented individual; and
 - (B) the basis of the notice described in Subsection (1); and
 - (ii) be sent promptly after the day on which the time to appeal, if any, the action that is the basis for the notification under Subsection (1) ends.

Enacted by Chapter 18, 2011 General Session

Part 3

Employee Verification and Employer Sanctions

63G-12-301 Employing unauthorized alien -- Verification of employment eligibility.

- (1) On and after the program start date, an employer may not knowingly employ an unauthorized alien who does not hold a permit.
- (2) On and after the program start date, a private employer employing 15 or more employees within the state for each working day in each of 20 calendar weeks or more in the current or preceding calendar year, after hiring an employee, shall verify the employment eligibility of the new employee:
 - (a) through the e-verify program if the individual does not hold a permit; and
 - (b) through the u-verify program if the individual holds a permit.
- (3) A private employer shall keep a record of the verification required by Subsection (2) for the longer of:
 - (a) the duration of the employee's employment; or
 - (b) at least three years from the date of verification.
- (4) On and after the program start date, a private employer shall terminate the employment of an undocumented individual if the undocumented individual is determined by the department to not hold a valid permit.

Enacted by Chapter 18, 2011 General Session

63G-12-302 Status verification system -- Registration and use -- Performance of services -- Unlawful practice.

- (1) As used in this section:
 - (a) "Contract" means an agreement for the procurement of goods or services that is awarded through a request for proposals process with a public employer and includes a sole source contract.
 - (b) "Contractor" means a subcontractor, contract employee, staffing agency, or any contractor regardless of its tier.
- (2)
 - (a) Subject to Subsection (5), a public employer shall register with and use a Status Verification System to verify the federal employment authorization status of a new employee.
 - (b) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.
- (3)
 - (a) Subject to Subsection (5), beginning July 1, 2009:
 - (i) a public employer may not enter into a contract for the physical performance of services within the state with a contractor unless the contractor registers and participates in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the state; and
 - (ii) a contractor shall register and participate in the Status Verification System in order to enter into a contract with a public employer.
 - (b)

- (i) For purposes of compliance with Subsection (3)(a), a contractor is individually responsible for verifying the employment status of only new employees who work under the contractor's supervision or direction and not those who work for another contractor or subcontractor, except as otherwise provided in Subsection (3)(b)(ii).
- (ii) Each contractor or subcontractor who works under or for another contractor shall certify to the main contractor by affidavit that the contractor or subcontractor has verified through the Status Verification System the employment status of each new employee of the respective contractor or subcontractor.
- (c) Subsection (3)(a) does not apply to a contract:
 - (i) entered into by the entities referred to in Subsection (3)(a) prior to July 1, 2009, even though the contract may involve the physical performance of services within the state on or after July 1, 2009; or
 - (ii) that involves underwriting, remarketing, broker-dealer activities, securities placement, investment advisory, financial advisory, or other financial or investment banking services.
- (4)
 - (a) It is unlawful for an employing entity in the state to discharge an employee working in Utah who is a United States citizen or permanent resident alien and replace the employee with, or have the employee's duties assumed by, an employee who:
 - (i) the employing entity knows, or reasonably should have known, is an unauthorized alien hired on or after July 1, 2009; and
 - (ii) is working in the state in a job category:
 - (A) that requires equal skill, effort, and responsibility; and
 - (B) which is performed under similar working conditions, as defined in 29 U.S.C., Sec. 206 (d) (1), as the job category held by the discharged employee.
 - (b) An employing entity, which on the date of a discharge in question referred to in Subsection (4) (a) is enrolled in and using the Status Verification System to verify the employment eligibility of its employees in Utah who are hired on or after July 1, 2009, is exempt from liability, investigation, or lawsuit arising from an action under this section.
 - (c) A cause of action for a violation of this Subsection (4) arises exclusively from the provisions of this Subsection (4).
- (5) On and after the program start date:
 - (a) a public employer, after hiring an employee, shall verify the employment eligibility of the new employee:
 - (i) through the status verification system if the individual does not hold a permit; and
 - (ii) through the u-verify program if the individual holds a permit; and
 - (b) a contractor is considered to be in compliance with this section if, after hiring an employee, the contractor verifies the employment eligibility of the new employee:
 - (i) through the status verification system if the individual does not hold a permit; and
 - (ii) through the u-verify program if the individual holds a permit.

Renumbered and Amended by Chapter 18, 2011 General Session

63G-12-303 Liability protections.

- (1) On or after the program start date, a private employer may not be held civilly liable under state law in a cause of action for the private employer's unlawful hiring of an unauthorized alien if:
 - (a) the private employer complies with Subsection 63G-12-301(2); and
 - (b) the information obtained after verification under Subsection 63G-12-301(2) indicates that:
 - (i) the employee's federal legal status allowed the private employer to hire the employee; or

- (ii) on and after the program start date, the employee held a valid permit.
- (2) On or after the program start date, a private employer may not be held civilly liable under state law in a cause of action for the private employer's refusal to hire an individual if:
 - (a) the private employer complies with Subsection 63G-12-301(2); and
 - (b) the information obtained after verification under Subsection 63G-12-301(2) indicates that the employee:
 - (i) was an unauthorized alien; and
 - (ii) on and after the program start date, does not hold a valid permit.
- (3) This chapter does not create a cause of action, on the basis of discrimination or otherwise, for not hiring an individual who holds a permit.
- (4) This section applies to a private employer that verifies the employment eligibility of a new employee as described in Subsection 63G-12-301(2) regardless of whether the private employer has less than 15 employees within the state.

Enacted by Chapter 18, 2011 General Session

63G-12-304 Voluntary registration by private employer certifying participation in verification.

- (1)
 - (a) On or after the program start date, a private employer may register with the department certifying that the private employer is in compliance with Subsection 63G-12-301(2).
 - (b) A private employer may register with the department under this section regardless of whether the private employer is required to comply with Subsection 63G-12-301(2).
- (2) To register or renew a registration with the department under this part, a private employer shall:
 - (a) file a registration statement with the department that certifies compliance with Subsection 63G-12-301(2); and
 - (b) pay a fee established by the department in accordance Section 63J-1-504 that reflects the cost of registering employers under this section and publishing the list described in Subsection (5).
- (3) A registration under this part expires every two years on the anniversary of the day on which the registration is filed with the department.
- (4) In accordance with Chapter 3, Utah Administrative Rulemaking Act, the department may make rules to provide for:
 - (a) the form of a registration statement under this section;
 - (b) the process of filing a registration statement under this section; and
 - (c) the process of renewing a registration statement under this section.
- (5) On and after the program start date, the department shall publish electronically a list of private employers who register under this section on a website accessible to the general public without a charge.
- (6) The department shall coordinate with the Department Commerce to transfer the registration operated by the Department of Commerce to the department effective on the program start date.

Enacted by Chapter 18, 2011 General Session

63G-12-305 Administrative actions -- Defenses.

- (1) On and after the program start date and in accordance with Chapter 4, Administrative Procedures Act, the department may bring agency action against a private employer who violates Subsection 63G-12-301(1) to impose a penalty described in Section 63G-12-306.
- (2)
 - (a) To determine whether an employee is an unauthorized alien for purposes of Subsection (1), the department shall consider only the federal government's determination pursuant to 8 U.S.C. Sec. 1373(c).
 - (b) The federal government's determination creates a rebuttable presumption of the employee's lawful status. The department may request the federal government to provide automated or testimonial verification pursuant to 8 U.S.C. Sec. 1373(c).
- (3) For the purposes of this part, proof of verifying the employment authorization in accordance with Subsection 63G-12-301(2) creates a rebuttable presumption that an employer did not knowingly employ an unauthorized alien who does not hold a valid permit.
- (4)
 - (a) For the purposes of this section, an employer that establishes that the employer has complied in good faith with the requirements of 8 U.S.C. Sec. 1324a(b) establishes an affirmative defense that the employer did not knowingly employ an unauthorized alien.
 - (b) An employer is considered to have complied with the requirements of 8 U.S.C. Sec. 1324a(b), notwithstanding an isolated, sporadic, or accidental technical or procedural failure to meet the requirements, if there is a good faith attempt to comply with the requirements.

Enacted by Chapter 18, 2011 General Session

63G-12-306 Penalties.

- (1) As used in this section:
 - (a) "Applicable license" means a license issued under:
 - (i) Title 32B, Alcoholic Beverage Control Act;
 - (ii) Title 58, Occupations and Professions; or
 - (iii) Title 61, Securities Division - Real Estate Division.
 - (b) "First violation" means the first time the department imposes a penalty under this section, regardless of the number of individuals the private employer hired in violation of Subsection 63G-12-301(1).
 - (c) "Second violation" means the second time the department imposes a penalty under this section, regardless of the number of individuals the private employer hired in violation of Subsection 63G-12-301(1).
 - (d) "Third or subsequent violation" means a violation of Subsection 63G-12-301(1) committed after a second violation.
- (2)
 - (a) On or after the program start date, a private employer who violates Subsection 63G-12-301(1) is subject to a penalty provided in this section under an action brought by the department in accordance with Section 63G-12-305.
 - (b) For a first violation of Subsection 63G-12-301(1), the department shall impose a civil penalty on the private employer not to exceed \$100 for each individual employed by the private employer during the time period specified in the notice of agency action who is an unauthorized alien who does not hold a valid permit.
 - (c) For a second violation of Subsection 63G-12-301(1), the department shall impose a civil penalty on the private employer not to exceed \$500 for each individual employed by the

private employer during the time period specified in the notice of agency action who is an unauthorized alien who does not hold a valid permit.

- (d) For a third or subsequent violation of Subsection 63G-12-301(1), the department shall:
- (i) order the revocation of the one or more applicable licenses that are issued to an owner, officer, director, manager, or other individual in a similar position for the private employer for a period not to exceed one year; or
 - (ii) if no individual described in Subsection (2)(d)(i) holds an applicable license, impose a civil penalty on the private employer not to exceed \$10,000.
- (3)
- (a) If the department finds a third or subsequent violation, the department shall notify the Department of Commerce and the Department of Alcoholic Beverage Services once the department's order:
 - (i) is not appealed, and the time to appeal has expired; or
 - (ii) is appealed, and is affirmed, in whole or in part on appeal.
 - (b) The notice required under Subsection (3)(a) shall state:
 - (i) that the department has found a third or subsequent violation;
 - (ii) that any applicable license held by an individual described in Subsection (2)(d)(i) is to be revoked; and
 - (iii) the time period for the revocation, not to exceed one year.
 - (c) The department shall base its determination of the length of revocation under this section on evidence or information submitted to the department during the action under which a third or subsequent violation is found, and shall consider the following factors, if relevant:
 - (i) the number of unauthorized aliens who do not hold a permit that are employed by the private employer;
 - (ii) prior misconduct by the private employer;
 - (iii) the degree of harm resulting from the violation;
 - (iv) whether the private employer made good faith efforts to comply with any applicable requirements;
 - (v) the duration of the violation;
 - (vi) the role of the individuals described in Subsection (2)(d)(i) in the violation; and
 - (vii) any other factor the department considers appropriate.
- (4) Within 10 business days of receipt of notice under Subsection (3), the Department of Commerce and the Department of Alcoholic Beverage Services shall:
- (a)
 - (i) if the Department of Commerce or Alcoholic Beverage Services Commission has issued an applicable license to an individual described in Subsection (2)(d)(i), notwithstanding any other law, revoke the applicable license; and
 - (ii) notify the department that the applicable license is revoked; or
 - (b) if the Department of Commerce or Alcoholic Beverage Services Commission has not issued an applicable license to an individual described in Subsection (2)(d)(i), notify the department that an applicable license has not been issued to an individual described in Subsection (2)(d)(i).
- (5) If an individual described in Subsection (2)(d)(i) is licensed to practice law in the state and the department finds a third or subsequent violation of Subsection 63G-12-301(1), the department shall notify the Utah State Bar of the third and subsequent violation.

Amended by Chapter 447, 2022 General Session

Part 4 Identification and General Verification

63G-12-401 Creation of identity documents -- Issuance to citizens, nationals, and legal permanent resident aliens -- Exceptions.

- (1) The following entities may create, publish, or otherwise manufacture an identification document, identification card, or identification certificate and possess an engraved plate or other device for the printing of an identification document:
 - (a) a federal, state, or local government agency for employee identification, which is designed to identify the bearer as an employee;
 - (b) a federal, state, or local government agency for purposes authorized or required by law or a legitimate purpose consistent with the duties of the agency, including such documents as voter identification cards, identification cards, passports, birth certificates, and Social Security cards; and
 - (c) a public school or state or private educational institution to identify the bearer as an administrator, faculty member, student, or employee.
- (2) The name of the issuing entity shall be clearly printed upon the face of the identification document.
- (3) Except as otherwise provided in Subsections (4) and (5) or by federal law, an entity providing an identity document, card, or certificate under Subsection (1)(b) or (c) shall issue the document, card, or certificate only to:
 - (a) a United States citizen;
 - (b) a national; or
 - (c) a legal permanent resident alien.
- (4)
 - (a) Subsection (3) does not apply to an applicant for an identification document who presents, in person, valid documentary evidence of the applicant's:
 - (i) unexpired immigrant or nonimmigrant visa status for admission into the United States;
 - (ii) pending or approved application for asylum in the United States;
 - (iii) admission into the United States as a refugee;
 - (iv) pending or approved application for temporary protected status in the United States;
 - (v) approved deferred action status; or
 - (vi) pending application for adjustment of status to legal permanent resident or conditional resident.
 - (b)
 - (i) An entity listed in Subsection (1)(b) or (c) may issue a Subsection (1)(b) or (c) identification document to an applicant who satisfies the requirements of Subsection (4)(a).
 - (ii) Except as otherwise provided by federal law, the document is valid only:
 - (A) during the period of time of the individual's authorized stay in the United States; or
 - (B) for one year from the date of issuance if there is no definite end to the individual's period of authorized stay.
 - (iii) An entity issuing an identification document under this Subsection (4) shall clearly indicate on the document:
 - (A) that it is temporary; and
 - (B) its expiration date.

- (c) An individual may renew a document issued under this Subsection (4) only upon presentation of valid documentary evidence that the status by which the individual originally qualified for the identification document has been extended by the United States Citizenship and Immigration Services or other authorized agency of the United States Department of Homeland Security.
- (5)
 - (a) Subsection (3) does not apply to an identification document issued under Subsection (1)(c) that:
 - (i) is only valid for use on the educational institution's campus or facility; and
 - (ii) includes a statement of the restricted use conspicuously printed upon the face of the identification document.
 - (b) Subsection (3) does not apply to a license certificate, driving privilege card, or identification card issued or renewed under Title 53, Chapter 3, Uniform Driver License Act.
 - (c) Subsection (3) does not apply to a public transit pass issued by a public transit district as defined in Title 17B, Chapter 2a, Part 8, Public Transit District Act, that:
 - (i) is only valid for use on the public transit system; and
 - (ii) includes a statement of the restricted use conspicuously printed on the face of the public transit pass.
 - (d) Subsection (3) does not apply to a permit issued under Section 63G-12-207.
 - (e) Subsection (3) does not apply to a permit issued under Chapter 14, Utah Pilot Sponsored Resident Immigrant Program Act.
- (6) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

Renumbered and Amended by Chapter 18, 2011 General Session
Amended by Chapter 20, 2011 General Session

63G-12-402 Receipt of state, local, or federal public benefits -- Verification -- Exceptions -- Fraudulently obtaining benefits -- Criminal penalties -- Annual report.

- (1)
 - (a) Except as provided in Subsection (3) or when exempted by federal law, an agency or political subdivision of the state shall verify the lawful presence in the United States of an individual at least 18 years old who applies for:
 - (i) a state or local public benefit as defined in 8 U.S.C. Sec. 1621; or
 - (ii) a federal public benefit as defined in 8 U.S.C. Sec. 1611, that is administered by an agency or political subdivision of this state.
 - (b) For purpose of a license issued under Title 58, Chapter 55, Utah Construction Trades Licensing Act, to an applicant that is an unincorporated entity, the Department of Commerce shall verify in accordance with this Subsection (1) the lawful presence in the United States of each individual who:
 - (i) owns an interest in the contractor that is an unincorporated entity; and
 - (ii) engages, or will engage, in a construction trade in Utah as an owner of the contractor described in Subsection (1)(b)(i).
- (2) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.
- (3) Verification of lawful presence under this section is not required for:
 - (a) any purpose for which lawful presence in the United States is not restricted by law, ordinance, or regulation;

- (b) assistance for health care items and services that:
 - (i) are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C. Sec. 1396b(v)(3), of the individual involved; and
 - (ii) are not related to an organ transplant procedure;
- (c) short-term, noncash, in-kind emergency disaster relief;
- (d) public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not the symptoms are caused by the communicable disease;
- (e) programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter, specified by the United States Attorney General, in the sole and unreviewable discretion of the United States Attorney General after consultation with appropriate federal agencies and departments, that:
 - (i) deliver in-kind services at the community level, including through public or private nonprofit agencies;
 - (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the income or resources of the individual recipient; and
 - (iii) are necessary for the protection of life or safety;
- (f) the exemption for paying the nonresident portion of total tuition as set forth in Section 53B-8-106;
- (g) an applicant for a license under Section 61-1-4, if the applicant:
 - (i) is registered with the Financial Industry Regulatory Authority; and
 - (ii) files an application with the state Division of Securities through the Central Registration Depository;
- (h) a state public benefit to be given to an individual under Title 49, Utah State Retirement and Insurance Benefit Act;
- (i) a home loan that will be insured, guaranteed, or purchased by:
 - (i) the Federal Housing Administration, the Veterans Administration, or any other federal agency; or
 - (ii) an enterprise as defined in 12 U.S.C. Sec. 4502;
- (j) a subordinate loan or a grant that will be made to an applicant in connection with a home loan that does not require verification under Subsection (3)(i);
- (k) an applicant for a license issued by the Department of Commerce or individual described in Subsection (1)(b), if the applicant or individual provides the Department of Commerce:
 - (i) certification, under penalty of perjury, that the applicant or individual is:
 - (A) a United States citizen;
 - (B) a qualified alien as defined in 8 U.S.C. Sec. 1641; or
 - (C) lawfully present in the United States; and
 - (ii)
 - (A) the number assigned to a driver license or identification card issued under Title 53, Chapter 3, Uniform Driver License Act; or
 - (B) the number assigned to a driver license or identification card issued by a state other than Utah if, as part of issuing the driver license or identification card, the state verifies an individual's lawful presence in the United States; and
- (l) an applicant for:
 - (i) an Opportunity scholarship described in Title 53B, Chapter 8, Part 2, Regents' Scholarship Program;
 - (ii) a New Century scholarship described in Section 53B-8-105;
 - (iii) a promise grant described in Section 53B-13a-104; or

- (iv) a scholarship:
 - (A) for an individual who is a graduate of a high school located within Utah; and
 - (B) administered by an institution of higher education as defined in Section 53B-2-101.
- (4)
 - (a) An agency or political subdivision required to verify the lawful presence in the United States of an applicant under this section shall require the applicant to certify under penalty of perjury that:
 - (i) the applicant is a United States citizen; or
 - (ii) the applicant is:
 - (A) a qualified alien as defined in 8 U.S.C. Sec. 1641; and
 - (B) lawfully present in the United States.
 - (b) The certificate required under this Subsection (4) shall include a statement advising the signer that providing false information subjects the signer to penalties for perjury.
- (5) An agency or political subdivision shall verify a certification required under Subsection (4)(a)(ii) through the federal SAVE program.
- (6)
 - (a) An individual who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in a certification under Subsection (3)(k) or (4) is subject to the criminal penalties applicable in this state for:
 - (i) making a written false statement under Section 76-8-504; and
 - (ii) fraudulently obtaining:
 - (A) public assistance program benefits under Section 76-8-1203.1; or
 - (B) unemployment compensation under Section 76-8-1301, 76-8-1302, 76-8-1303, or 76-8-1304.
 - (b) If the certification constitutes a false claim of United States citizenship under 18 U.S.C. Sec. 911, the agency or political subdivision shall file a complaint with the United States Attorney General for the applicable district based upon the venue in which the application was made.
 - (c) If an agency or political subdivision receives verification that a person making an application for a benefit, service, or license is not a qualified alien, the agency or political subdivision shall provide the information to the Office of the Attorney General unless prohibited by federal mandate.
- (7) An agency or political subdivision may adopt variations to the requirements of this section that:
 - (a) clearly improve the efficiency of or reduce delay in the verification process; or
 - (b) provide for adjudication of unique individual circumstances where the verification procedures in this section would impose an unusual hardship on a legal resident of Utah.
- (8) It is unlawful for an agency or a political subdivision of this state to provide a state, local, or federal benefit, as defined in 8 U.S.C. Sec. 1611 and 1621, in violation of this section.
- (9) A state agency or department that administers a program of state or local public benefits shall:
 - (a) provide an annual report to the governor, the president of the Senate, and the speaker of the House regarding its compliance with this section; and
 - (b)
 - (i) monitor the federal SAVE program for application verification errors and significant delays;
 - (ii) provide an annual report on the errors and delays to ensure that the application of the federal SAVE program is not erroneously denying a state or local benefit to a legal resident of the state; and
 - (iii) report delays and errors in the federal SAVE program to the United States Department of Homeland Security.

Amended by Chapter 96, 2024 General Session

Chapter 14 **Utah Pilot Sponsored Resident Immigrant Program Act**

Part 1 **General Provisions**

63G-14-101 Title.

This chapter is known as the "Utah Pilot Sponsored Resident Immigrant Program Act."

Enacted by Chapter 20, 2011 General Session

63G-14-102 Definitions.

- (1) "Department" means the Department of Public Safety created in Section 53-1-103.
- (2)
 - (a) "Foreign national," except as provided in Subsection (2)(b), means an individual who is a citizen of a foreign country.
 - (b) "Foreign national" does not include an individual who is in the United States, but who is not lawfully present in any of the states of the United States.
- (3) "Permit" means an identification permit issued in accordance with Section 63G-14-204.
- (4) "Program" means the Utah Pilot Sponsored Resident Immigrant Program created in Section 63G-14-201.
- (5) "Resident immigrant" means an individual who:
 - (a) is a foreign national; and
 - (b) is accepted into the program in accordance with Section 63G-14-202.
- (6) "Sponsor" means an individual who agrees to sponsor a foreign national under the program in accordance with Section 63G-14-203.

Enacted by Chapter 20, 2011 General Session

Part 2 **Utah Pilot Sponsored Resident Immigrant Program**

63G-14-201 Creation of program.

- (1)
 - (a) The governor shall create a program known as the "Utah Pilot Sponsored Resident Immigrant Program":
 - (i) that is consistent with this chapter; and
 - (ii) under which a resident immigrant may reside, work, and study in Utah, except that the program may not permit a resident immigrant to travel outside of the state except as provided in Subsection 63G-14-206(1).
 - (b) The governor shall:
 - (i) begin implementation of the program by no later than July 1, 2027; and

- (ii) end operation of the program on June 30, 2032.
- (c) Under the program, the governor may facilitate transport to Utah for a foreign national who has been accepted into the program.
- (d) The governor may recommend legislation to the Legislature to address how a resident immigrant is to be treated under statutes that relate to an alien.
- (2) The department shall administer the program, except to the extent that the governor delegates a power or duty under the program to another state agency. Subject to Subsection (3), the department may make rules in accordance with Chapter 3, Utah Administrative Rulemaking Act, to implement the program to the extent expressly provided for in this chapter.
- (3) The governor may act by executive order whenever the department is authorized to make rules under this chapter. If there is a conflict between a rule made by the department and an executive order of the governor, the executive order governs.

Amended by Chapter 81, 2016 General Session

63G-14-202 Approval as a resident immigrant -- Ineligibility.

- (1) To be considered for approval as a resident immigrant for purposes of the program, a foreign national shall:
 - (a) file an application with the department;
 - (b) at the time of filing the application be living outside of the United States;
 - (c) pass a health and background screening;
 - (d) provide evidence that the foreign national has not been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its equivalent to a felony or class A misdemeanor;
 - (e) file proof of sponsorship by a sponsor who meets the requirements of Section 63G-14-203; and
 - (f) pay a fee established by the department in accordance with Section 63J-1-504.
- (2) A foreign national is ineligible for the program if the individual:
 - (a) is in the United States at the time of application for the program; or
 - (b) is a citizen of a country:
 - (i) designated by the United States State Department as a state sponsor of terrorism in accordance with section 6(j) of the Export Administration Act, section 40 of the Arms Export Control Act, and section 620A of the Foreign Assistance Act;
 - (ii) against which the United States has declared war; or
 - (iii) against which the United States has imposed sanctions as listed under a sanctions program of the Office of Foreign Assets Control within the United States Department of Treasury.
- (3) A foreign national may appeal the denial of participation in the program as a resident immigrant in accordance with Chapter 4, Administrative Procedures Act.
- (4)
 - (a) The department, in consultation with the governor, shall make rules in accordance with Chapter 3, Utah Administrative Rulemaking Act, that provide:
 - (i) what constitutes passing a health screening to be eligible to be accepted into the program, except at a minimum to be eligible to participate in the program an individual may not have a medical condition that would make the individual inadmissible for public health grounds under 8 U.S.C. Sec. 1182;
 - (ii) what constitutes a background screening to be eligible to be accepted into the program;
 - (iii) what constitutes proof of sponsorship to be provided by the foreign national;
 - (iv) the term for which a foreign national is considered a resident immigrant; and

- (v) the process of obtaining a resident immigrant permit under Section 63G-14-204.
- (b) When making a rule under this section, the department shall use federal standards as a guideline to avoid unnecessary duplication and additional costs.

Enacted by Chapter 20, 2011 General Session

63G-14-203 Sponsorship.

- (1)
 - (a) An individual who is a United States citizen and a resident of Utah may sponsor a foreign national as a resident immigrant by agreeing to assume financial responsibility for the foreign national in accordance with this section.
 - (b) An individual described in Subsection (1)(a) may sponsor:
 - (i) two individual foreign nationals; or
 - (ii) each individual in an association of individuals:
 - (A) who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses;
 - (B) who are relatives of each other; and
 - (C) at least one of whom is a parent.
- (2) The department by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, shall establish eligibility requirements to be a sponsor, except that at a minimum the eligibility requirements shall require that the sponsor:
 - (a) prove an income level at or above 125% of the federal poverty level; or
 - (b) meet an alternative test created by the department that considers assets as well as income.
- (3)
 - (a) The department by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, shall define what constitutes an assumption of financial responsibility for a resident immigrant, except that at a minimum the rules shall require that the sponsor agrees:
 - (i) to accept responsibility for any financial liability a foreign national incurs while participating in the program;
 - (ii) to an assumption of financial responsibility for the foreign national that is equivalent to the financial responsibility that a parent has for a dependent child; and
 - (iii) that the state may consider the sponsor's income and assets to be available for the support of the resident immigrant sponsored by the sponsor.
 - (b) A sponsor violates this chapter if the sponsor fails to pay a financial liability of a resident immigrant that is not paid by the resident immigrant and that is subject to the sponsor's assumption of financial responsibility for the resident immigrant.
- (4)
 - (a) To terminate the sponsorship of a resident alien, an individual shall:
 - (i) notify the department; and
 - (ii) provide evidence satisfactory to the department that the resident alien no longer resides in the United States.
 - (b) A sponsorship is terminated the day on which the department certifies that the sponsor has complied with Subsection (4)(a).
- (5) A sponsor shall prove to the satisfaction of the department that a resident immigrant leaves the United States if:
 - (a) the resident alien is disqualified from the program; or
 - (b) the sponsor terminates sponsorship.

Enacted by Chapter 20, 2011 General Session

63G-14-204 Resident immigrant permit.

- (1) The department shall:
 - (a) create a resident immigrant permit to be issued to an individual who is a resident immigrant that:
 - (i) is of impervious material that is resistant to wear or damage; and
 - (ii) minimizes the risk that the permit may be forged, falsified, or counterfeited; and
 - (b) ensure that a permit:
 - (i) includes a photograph of the individual to whom the permit is issued;
 - (ii) prominently states the day on which the permit expires;
 - (iii) prominently states the type of permit; and
 - (iv) includes a unique identifier.
- (2) The department shall establish the fee under Section 63G-14-202 to be adequate to pay the costs incurred to issue a permit.

Enacted by Chapter 20, 2011 General Session

63G-14-205 Employment and taxation obligations under the program.

- (1) A person in the state may employ a resident immigrant.
- (2) A resident immigrant, or a resident immigrant's employer, shall pay all income taxes and employment taxes, fees, or charges in accordance with the program.
- (3)
 - (a) The State Tax Commission shall, by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, provide a means that is effective as of the day on which the governor begins implementation of the program under which a person who receives services from a resident immigrant to withhold from compensation paid to the resident immigrant an amount to be determined by State Tax Commission rule that, as closely as possible, equals the income taxes that would be withheld under state law if the resident immigrant were an employee with a Social Security number.
 - (b) The rules described in Subsection (3)(a) shall be substantially similar to Title 59, Chapter 10, Part 4, Withholding of Tax.
 - (c) As part of the program the governor shall provide a method by which there is collected and remitted to the federal government the money collected that is equivalent to the income and employment taxes that would be withheld under federal law if a resident immigrant were an employee with a Social Security number.

Enacted by Chapter 20, 2011 General Session

63G-14-206 Restrictions on activities of resident immigrant.

- (1)
 - (a) A resident immigrant may not travel outside of the state without the express written approval of the department.
 - (b) The department shall by rule, made in accordance with Chapter 3, Utah Administrative Rulemaking Act, provide a process by which a person obtains approval to travel as required by Subsection (1)(a).

- (2) The department may by rule, made in accordance with Chapter 3, Utah Administrative Rulemaking Act, impose other requirements to maintain the status of a resident immigrant that are consistent with this chapter.

Enacted by Chapter 20, 2011 General Session

Part 3 Enforcement

63G-14-301 Disqualification from program.

- (1) A resident immigrant is disqualified from the program if after becoming a resident immigrant the individual:
 - (a) is convicted of, pleads guilty to, pleads no contest to, pleads guilty in a similar manner to, or is resolved by diversion or its equivalent to a felony or class A misdemeanor; or
 - (b) violates the terms and restrictions of the program.
- (2) In accordance with Chapter 4, Administrative Procedures Act, the department may bring an action to terminate a resident immigrant's participation in the program for a violation described in Subsection (1).

Enacted by Chapter 20, 2011 General Session

63G-14-302 Penalties on sponsors.

In accordance with Chapter 4, Administrative Procedures Act, the department may:

- (1) impose a fine on a sponsor who violates Subsection 63G-14-203(5) not to exceed \$5,000; and
- (2) prohibit a sponsor from sponsoring another resident alien for a period of five years for a violation described in Subsection 63G-14-203(3)(b).

Enacted by Chapter 20, 2011 General Session

Chapter 15 State Issued Identification Number Act

Part 1 General Provisions

63G-15-101 Title.

This chapter is known as the "State Issued Identification Number Act."

Enacted by Chapter 250, 2012 General Session

63G-15-102 Definitions.

As used in this chapter:

- (1) "Government entity" means the state and its political subdivisions as both are defined in this section.

- (2) "Political subdivision" is as defined in Section 63G-7-102.
- (3) "State":
 - (a) means the state of Utah;
 - (b) except as provided in Subsection (3)(c), includes each office, department, division, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state; and
 - (c) does not include the State Tax Commission.

Enacted by Chapter 250, 2012 General Session

Part 2

State Issued Identification Numbers

63G-15-201 Restrictions for state issued identification numbers.

- (1) In accordance with Subsection (2), a government entity may not use a nine digit number as a person's identification number with the government entity.
- (2) The provisions of Subsection (1) apply to the government entity if the government entity's information technology system is:
 - (a) capable, within existing appropriations, of creating and using an identification number that is not a nine digit number; or
 - (b) undergoing significant reprogramming or design change and the elimination of a nine digit identification number can be accomplished as part of the reprogramming or redesign, or the nine digit number that will be used by the government entity:
 - (i) is a combination of letters and numbers;
 - (ii) is the individual's Social Security number and the use of the Social Security number is necessary for the governmental entity; or
 - (iii) is not the individual's Social Security number, but the government entity can take steps to ensure that the nine digit number is not an active Social Security number that is assigned to another person.

Enacted by Chapter 250, 2012 General Session

Chapter 16

State Sovereignty

63G-16-101 State sovereignty and rights of set-off.

- (1) Pursuant to the Ninth and Tenth Amendments of the Constitution of the United States of America, the state of Utah does solemnly affirm its state sovereignty and fully and unconditionally reserves and asserts all rights and powers, directly and indirectly related to those rights and powers.
- (2) This affirmation, reservation, and assertion includes rights and claims of set-off by the state of Utah for any amounts it claims to have been inequitably or unlawfully caused or imposed by the federal government.

Enacted by Chapter 38, 2012 General Session

Part 2 Utah Constitutional Sovereignty Act

63G-16-201 Definitions.

As used in this part:

- (1) "Board of education" means:
 - (a) a local school board described in Title 53G, Chapter 4, School Districts;
 - (b) the State Board of Education;
 - (c) the State Charter School Board created under Section 53G-5-201; or
 - (d) a charter school governing board described in Title 53G, Chapter 5, Charter Schools.
- (2) "Federal agency" means a department, agency, authority, commission, council, board, office, bureau, or other administrative unit of the executive branch of the United States government.
- (3)
 - (a) "Federal directive" means:
 - (i) a statute passed by the United States Congress;
 - (ii) an executive order by the president of the United States;
 - (iii) a rule or regulation adopted by a federal agency; or
 - (iv) an order or action by:
 - (A) a federal agency; or
 - (B) an employee or official appointed by the president of the United States.
 - (b) "Federal directive" does not include any order by the federal government calling the Utah National Guard into the service of the United States.
- (4)
 - (a) "Government officer" means:
 - (i) an individual elected to a position in state or local government, when acting in the capacity of the state or local government position;
 - (ii) an individual elected to a board of education, when acting in the capacity of a member of a board of education;
 - (iii) an individual appointed to fill a vacancy in a position described in Subsection (4)(a)(i) or (ii), when acting in the capacity of the position; or
 - (iv) an individual appointed to or employed in a full-time position by state government, local government, or a board of education, when acting in the capacity of the individual's appointment or employment.
 - (b) "Government officer" does not include a member or employee of the legislative branch of state government.
- (5) "Local government" means:
 - (a) a county, city, town, or metro township;
 - (b) a special district governed by Title 17B, Limited Purpose Local Government Entities - Special Districts;
 - (c) a special service district governed by Title 17D, Chapter 1, Special Service District Act;
 - (d) a community reinvestment agency governed by Title 17C, Limited Purpose Local Government Entities - Community Reinvestment Agency Act;
 - (e) a conservation district governed by Title 17D, Chapter 3, Conservation District Act;
 - (f) a redevelopment agency; or

- (g) an interlocal entity or a joint cooperative undertaking governed by Title 11, Chapter 13, Interlocal Cooperation Act.

63G-16-202 Resolution of the Legislature invoking state sovereignty -- Requirements -- Effect upon adoption -- Termination -- Relation to other law.

- (1) The Legislature may, by concurrent resolution, prohibit a government officer from enforcing or assisting in the enforcement of a federal directive within the state if the Legislature determines the federal directive violates the principles of state sovereignty in accordance with Subsection (2).
- (2) A federal directive violates the principles of state sovereignty if the federal directive restricts or infringes upon:
 - (a) a power or a right reserved to the state by the Tenth Amendment to the United States Constitution; or
 - (b) the state's rights or interests to provide for the health, safety, and welfare and promote the prosperity of the state's inhabitants.
- (3) A request for a concurrent resolution under Subsection (1) may not be filed unless:
 - (a) the request is approved by the speaker of the House of Representatives and the president of the Senate; or
 - (b) while the Legislature is convened and conducting business on the floor, identical motions to approve the request are made in each chamber of the Legislature and both motions are approved by a two-thirds majority of the members present in each chamber.
- (4) The Legislature shall consult with and consider any recommendations provided by the attorney general concerning the potential impact that a concurrent resolution may have on current or anticipated litigation.
- (5) Upon the filing of a request for a concurrent resolution under Subsection (1), the Legislature shall provide notice of the concurrent resolution, including the short title and proposed objectives, to the representatives of tribal governments listed in Subsection 9-9-104.5(2)(b).
- (6) A concurrent resolution under Subsection (1) shall:
 - (a) identify the federal directive the Legislature has determined violates the principles of state sovereignty under Subsection (2);
 - (b) include the information or findings upon which the Legislature has made the determination in Subsection (6)(a);
 - (c) specify the government officers to which the concurrent resolution applies;
 - (d) explain the effect that the concurrent resolution will have on the applicability of the federal directive within the state, including a description of any activities or forms of assistance that a government officer specified in Subsection (6)(c) is prohibited from conducting in connection with the enforcement of the federal directive; and
 - (e) describe any other requirements for a government officer specified in Subsection (6)(c) to comply with the concurrent resolution.
- (7) A concurrent resolution under Subsection (1):
 - (a) takes effect upon adoption and has the force of law; and
 - (b) after taking effect, may only be terminated by concurrent resolution.
- (8) The requirements for filing a request for a concurrent resolution in Subsection (3) apply to a concurrent resolution described in Subsection (7)(b).
- (9) The inaction of the Legislature in determining that a federal directive violates the principles of state sovereignty by concurrent resolution under this section:

- (a) does not imply or create a presumption that the federal directive is lawful under the United States Constitution; and
 - (b) has no effect on the attorney general's authority to pursue any appropriate legal action to challenge the federal directive on the basis of state sovereignty.
- (10) This section supersedes any conflicting provisions of Utah law.

Chapter 17 **Air Quality Mitigation**

Part 1 **General Provisions**

63G-17-101 Title.

- (1) This chapter is known as "Air Quality Mitigation."
- (2) This part is known as "General Provisions."

Enacted by Chapter 105, 2013 General Session

63G-17-102 Definitions.

As used in this chapter:

- (1) "Agency" means:
 - (a) the House of Representatives;
 - (b) the Senate;
 - (c) a staff office of the Legislature;
 - (d) a department in the executive branch of state government;
 - (e) the Judicial Council; or
 - (f) a state institution of higher education.
- (2) "Air pollutant" is as defined in 42 U.S.C. Sec. 7602(g).
- (3) "Designated county" means:
 - (a) Salt Lake County;
 - (b) Davis County;
 - (c) Utah County;
 - (d) Weber County;
 - (e) Box Elder County;
 - (f) Cache County;
 - (g) Duchesne County; or
 - (h) Uintah County.
- (4) "Mitigation efforts" means measures taken to reduce the emission of air pollutants, including:
 - (a) flexible work schedules to reduce driving during peak times;
 - (b) telecommuting;
 - (c) electronic communication, including teleconferencing;
 - (d) encouraging ride sharing;
 - (e) encouraging use of public or alternative forms of transportation;
 - (f) energy conservation;

- (g) using alternative energy sources;
- (h) recycling and using recycled products;
- (i) using non-aerosol products;
- (j) reducing idling;
- (k) low-maintenance landscaping; or
- (l) other technology that may be used, or measures that may be taken, to reduce the emission of air pollutants.

Enacted by Chapter 105, 2013 General Session

Part 2

Air Quality Mitigation by Agencies and School Districts

63G-17-201 Title.

This part is known as "Air Quality Mitigation by Agencies and School Districts."

Enacted by Chapter 105, 2013 General Session

63G-17-202 Air quality mitigation report and plan.

- (1) Except as provided in Subsection (2), and in accordance with Subsection (3):
- (a) on or before July 1, 2013, each school district shall submit to the State Board of Education, by email, a report on the mitigation efforts currently being used by the school district;
 - (b) on or before August 1, 2013:
 - (i) the State Board of Education shall submit to the Economic Development Task Force, by email, a summary report of the reports received under Subsection (1)(a); and
 - (ii) each agency shall submit to the Economic Development Task Force, by email, a report on the mitigation efforts currently being used by the agency;
 - (c) on or before August 1, 2013, each school district shall develop and submit to the State Board of Education, by email, a plan that describes the mitigation efforts that the school district will implement, within one year after the day on which the plan is submitted, to:
 - (i) reduce the emission of air pollutants on a regular basis; and
 - (ii) reduce the emission of air pollutants on a day for which the Division of Air Quality issues an air quality action alert; and
 - (d) on or before September 1, 2013:
 - (i) the State Board of Education shall submit to the Economic Development Task Force, by email, a summary of the plans received under Subsection (1)(c); and
 - (ii) each agency shall develop and submit to the Economic Development Task Force, by email, a plan that describes the mitigation efforts that the agency will implement within one year after the day on which the plan is submitted, to:
 - (A) reduce the emission of air pollutants on a regular basis; and
 - (B) reduce the emission of air pollutants on a day for which the Division of Air Quality issues an air quality action alert.
- (2)
- (a) A school district is exempt from the provisions of this section if:
 - (i) the school district is not, in whole or in part, within a designated county; and
 - (ii) the school district's employees do not reside within a designated county.

- (b) A report or plan that an agency is required to submit under this section is not required to contain information in relation to a designated county where an employee of the agency does not reside or work.
- (3) A plan described in Subsection (1)(c) or (d) shall include information regarding additional funds, if any, that are needed in order to implement all or a portion of the plan.

Enacted by Chapter 105, 2013 General Session

Chapter 19 Biotechnology Provisions

Part 1 Biotechnology Provisions

63G-19-101 Title -- Definitions.

- (1) This chapter is known as "Biotechnology Provisions."
- (2) As used in this part, "biotechnology" is:
 - (a) the modification of living organisms by recombinant DNA techniques; and
 - (b) a means to accomplish, through genetic engineering, the same kinds of modifications accomplished through traditional genetic techniques such as crossbreeding.

Renumbered and Amended by Chapter 283, 2015 General Session

63G-19-102 Confidential information.

- (1) A state agency having access under federal law to biotechnology trade secrets and related confidential information shall manage the trade secrets and related confidential records as protected records under Title 63G, Chapter 2, Government Records Access and Management Act.
- (2) The records described in this section may be disclosed under the balancing provisions of Title 63G, Chapter 2, Government Records Access and Management Act, when a determination is made that disclosure is essential for the protection of the public's health or environment.

Renumbered and Amended by Chapter 283, 2015 General Session

63G-19-103 Preemption of local regulation.

- (1) A county, city, town, or other political subdivision may not regulate the technological processes relating to the development and use of biotechnologically created materials and organisms.
- (2) This preemption does not affect the powers of a county, city, town, or other political subdivision, including the power to regulate land use, business, industry, construction, and public utilities, to protect the public health or environment, or to provide fire protection and other public safety services.

Renumbered and Amended by Chapter 283, 2015 General Session

Chapter 20 Religious Protections in Relation to Marriage, Family, or Sexuality

Part 1 General Provisions

63G-20-101 Title.

This chapter is known as "Religious Protections in Relation to Marriage, Family, or Sexuality."

Enacted by Chapter 46, 2015 General Session

63G-20-102 Definitions.

As used in this chapter:

- (1) "Child placing" means the same as that term is defined in Section 26B-2-101.
- (2) "Child-placing agency" means a private person that is engaged in child placing related to a child who is not in the custody of the state.
- (3) "Government retaliation" means an action by a state or local government or an action by a state or local government official that:
 - (a) is taken in response to a person's exercise of a protection contained in Section 17-20-4, 63G-20-201, 63G-20-203.5, or 63G-20-301; and
 - (b)
 - (i) imposes a formal penalty on, fines, disciplines, discriminates against, denies the rights of, denies benefits to, or denies tax-exempt status to a person; or
 - (ii) subjects a person to an injunction or to an administrative claim or proceeding.
- (4)
 - (a) "Religious official" means an officer or official of a religion, when acting as such.
 - (b) "Religious official" includes an individual designated by the religion as clergy, minister, priest, pastor, rabbi, imam, bishop, stake president, or sealer, when that individual is acting as such.
- (5) "Religious organization" means:
 - (a) a religious organization, association, educational institution, or society;
 - (b) a religious corporation sole; or
 - (c) any corporation or association constituting a wholly owned subsidiary, affiliate, or agency of any religious organization, association, educational institution, society, or religious corporation sole.
- (6) "Sexuality" includes legal sexual conduct, legal sexual expression, sexual desires, and the status of a person as male or female.
- (7) "State or local government" means:
 - (a) a state government entity, agency, or instrumentality; or
 - (b) a local government entity, agency, or instrumentality.
- (8) "State or local government official" means an officer, employee, or appointee of a state or local government.

Amended by Chapter 466, 2023 General Session

63G-20-103 Interpretation.

- (1) Utah state courts and courts of the United States shall broadly construe this chapter in favor of a broad protection of religious beliefs, exercises, and conscience to the maximum extent permitted by the terms of this chapter and the Utah and United States constitutions.
- (2) Nothing in this chapter may be construed to limit:
 - (a) the authority of a state or local government or a state or local government official to protect the health, safety, or property of Utah residents through lawful means;
 - (b) the application of Utah's criminal laws;
 - (c) the application of Utah's laws barring discrimination in employment or housing; or
 - (d) the application of Utah's laws barring discrimination in public accommodations, subject to Section 63G-20-201.

Enacted by Chapter 46, 2015 General Session

Part 2

Government Entities Prohibited from Certain Burdens on Religious Beliefs

Superseded 9/1/2024

63G-20-201 Provisions governing solemnizing or recognizing a marriage -- Prohibition against employment actions.

Notwithstanding any other provision of law, a state or local government or a state or local government official may not:

- (1) require a religious official, when acting as such, or religious organization to solemnize or recognize for ecclesiastical purposes a marriage that is contrary to that religious official's or religious organization's religious beliefs;
- (2) if the religious official or religious organization is authorized to solemnize a marriage by Section 30-1-6, deny a religious official, when acting as such, or religious organization the authority to legally solemnize a legal marriage based on the religious official's or religious organization's refusal to solemnize any legal marriage that is contrary to the religious official's or religious organization's religious beliefs;
- (3) require a religious official, when acting as such, or religious organization to provide goods, accommodations, advantages, privileges, services, facilities, or grounds for activities connected with the solemnization or celebration of a marriage that is contrary to that religious official's or religious organization's religious beliefs; or
- (4) require a religious official, when acting as such, or religious organization to promote marriage through religious programs, counseling, courses, or retreats in a way that is contrary to that religious official's or religious organization's religious beliefs.

Enacted by Chapter 46, 2015 General Session

Effective 9/1/2024

63G-20-201 Provisions governing solemnizing or recognizing a marriage -- Prohibition against employment actions.

Notwithstanding any other provision of law, a state or local government or a state or local government official may not:

- (1) require a religious official, when acting as such, or religious organization to solemnize or recognize for ecclesiastical purposes a marriage that is contrary to that religious official's or religious organization's religious beliefs;
- (2) if the religious official or religious organization is authorized to solemnize a marriage by Section 81-2-305, deny a religious official, when acting as such, or religious organization the authority to legally solemnize a legal marriage based on the religious official's or religious organization's refusal to solemnize any legal marriage that is contrary to the religious official's or religious organization's religious beliefs;
- (3) require a religious official, when acting as such, or religious organization to provide goods, accommodations, advantages, privileges, services, facilities, or grounds for activities connected with the solemnization or celebration of a marriage that is contrary to that religious official's or religious organization's religious beliefs; or
- (4) require a religious official, when acting as such, or religious organization to promote marriage through religious programs, counseling, courses, or retreats in a way that is contrary to that religious official's or religious organization's religious beliefs.

Amended by Chapter 366, 2024 General Session

63G-20-202 Prohibition on government retaliation.

Notwithstanding any other law, a state or local government or a state or local government official may not engage in government retaliation against:

- (1) an individual, a religious official when acting as such, or a religious organization for exercising the protections contained in Section 17-20-4, 63G-20-201, or 63G-20-301; or
- (2) a child-placing agency for exercising the protections contained in Section 63G-20-203.5.

Amended by Chapter 466, 2023 General Session

63G-20-203 Prohibition on licensing disadvantages based on beliefs.

Notwithstanding any other law, a state or local government, a state or local government official, or another accrediting, certifying, or licensing body may not:

- (1) deny, revoke, or suspend a licensee's professional or business license based on that licensee's beliefs or the licensee's lawful expressions of those beliefs in a nonprofessional setting, including the licensee's religious beliefs regarding marriage, family, or sexuality; or
- (2) penalize, discipline, censure, disadvantage, discriminate against, or retaliate against a licensee who holds a professional or business license based on that licensee's beliefs or lawful expressions of those beliefs in a nonprofessional setting, including the licensee's religious beliefs regarding marriage, family, or sexuality.

Enacted by Chapter 46, 2015 General Session

63G-20-203.5 Child-placing agencies.

- (1) As used in this section, "consortium" means a statewide consortium of child-placing agencies described in Subsection 26B-2-127(8).
- (2) Notwithstanding any other provision of law, a state or local government, a state or local government official, or another accrediting, certifying, or licensing body, including the Office of Licensing within the Department of Health and Human Services, may not:
 - (a) require a consortium-member child-placing agency to perform, assist, counsel, recommend, consent to, facilitate, or participate in child placing, with a qualified prospective adoptive

- parent, that is contrary to the child-placing agency's religious teaching, practices, or sincerely held beliefs, or the good faith wishes of the birth mother as to the optimal placement of the child;
- (b) deny a consortium-member child-placing agency any grant, contract, or participation in a government program because the child-placing agency cannot, consistent with the child-placing agency's religious teaching, practices, or sincerely held beliefs, or consistent with the good faith wishes of the birth mother as to the optimal placement of the child, perform, assist, counsel, recommend, consent to, facilitate, or participate in a child placement with a qualified prospective adoptive parent; or
 - (c) deny an application for an initial license or accreditation, deny the renewal of a license or accreditation, or revoke the license or accreditation of a consortium-member child-placing agency that cannot, consistent with the child-placing agency's religious teaching, practices, or sincerely held beliefs, or consistent with the good faith wishes of the birth mother as to the optimal placement of the child, perform, assist, counsel, recommend, consent to, facilitate, or participate in a child placement with a qualified prospective adoptive parent.
- (3)
- (a) A consortium-member child-placing agency that cannot, consistent with the child-placing agency's religious teaching, practices, or sincerely held beliefs, or consistent with the good faith wishes of the birth mother as to the optimal placement of the child, perform, assist, counsel, recommend, consent to, facilitate, or participate in a child placement with a qualified prospective adoptive parent, shall refer the individual who is seeking child-placement services to another child-placing agency in the consortium.
 - (b) A referral by a child-placing agency under Subsection (3)(a) does not constitute a determination that a proposed placement is not in the best interest of the child.
- (4) The fact that a consortium-member child-placing agency cannot, consistent with the child-placing agency's religious teaching, practices, or sincerely held beliefs, or consistent with the good faith wishes of the birth mother as to the optimal placement of the child, perform, assist, counsel, recommend, consent to, facilitate, or participate in a child placement with a qualified prospective adoptive parent, may not form the basis for:
- (a) the imposition of a civil fine or other adverse administrative action; or
 - (b) any claim or cause of action under any state or local law.

Enacted by Chapter 466, 2023 General Session

Superseded 7/1/2024

63G-20-204 Remedies -- Attorney fees and costs.

- (1)
- (a) A person aggrieved by a violation of this part may:
 - (i) seek injunctive or other civil relief to require a state or local government or a state or local government official to comply with the requirements of this part; or
 - (ii) seek removal of the local government official for malfeasance in office according to the procedures and requirements of Title 77, Chapter 6, Removal by Judicial Proceedings.
 - (b) The court may award reasonable attorney fees and costs to the prevailing party.
- (2)
- (a) A person aggrieved by a violation of this part may bring a civil action in district court.
 - (b) If the plaintiff establishes one or more violations of this part by a preponderance of the evidence, the court:
 - (i) shall grant the plaintiff appropriate legal or equitable relief; and

- (ii) may award reasonable attorney fees and costs to the prevailing party.

Enacted by Chapter 46, 2015 General Session

Effective 7/1/2024

63G-20-204 Remedies -- Attorney fees and costs.

- (1)
 - (a) A person aggrieved by a violation of this part may:
 - (i) seek injunctive or other civil relief to require a state or local government or a state or local government official to comply with the requirements of this part; or
 - (ii) seek removal of the local government official for malfeasance in office according to the procedures and requirements of Title 77, Chapter 6, Removal by Judicial Proceedings.
 - (b) The court may award reasonable attorney fees and costs to the prevailing party.
- (2)
 - (a) A person aggrieved by a violation of this part may bring a civil action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.
 - (b) If the plaintiff establishes one or more violations of this part by a preponderance of the evidence, the court:
 - (i) shall grant the plaintiff appropriate legal or equitable relief; and
 - (ii) may award reasonable attorney fees and costs to the prevailing party.

Amended by Chapter 158, 2024 General Session

Part 3

Prohibitions on Certain Burdens on a Religious Official's or Religious Organization's Religious Beliefs about Marriage, Family, or Sexuality

63G-20-301 Prohibitions relating to refusing to solemnize a marriage.

Notwithstanding any other provision of law, an individual may not require a religious official, when acting as such, or religious organization to provide goods, accommodations, advantages, privileges, services, facilities, or grounds for activities connected with the solemnization or celebration of a marriage that is contrary to that religious official's or religious organization's religious beliefs about marriage, family, or sexuality.

Enacted by Chapter 46, 2015 General Session

Superseded 7/1/2024

63G-20-302 Remedies -- Civil action -- Attorney fees and costs.

- (1) A person aggrieved by a violation of this part may bring a civil action in district court.
- (2) If the plaintiff establishes one or more violations of this part by a preponderance of the evidence, the court:
 - (a) shall grant the plaintiff appropriate legal or equitable relief; and
 - (b) may award reasonable attorney fees and costs to the prevailing party.

Enacted by Chapter 46, 2015 General Session

Effective 7/1/2024

63G-20-302 Remedies -- Civil action -- Attorney fees and costs.

- (1) A person aggrieved by a violation of this part may bring a civil action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.
- (2) If the plaintiff establishes one or more violations of this part by a preponderance of the evidence, the court:
 - (a) shall grant the plaintiff appropriate legal or equitable relief; and
 - (b) may award reasonable attorney fees and costs to the prevailing party.

Amended by Chapter 158, 2024 General Session

63G-20-303 Severability clause.

If any provision of Laws of Utah 2015, Chapter 46, or its application to any person or circumstance is found to be unconstitutional, or in conflict with or superseded by federal law, the remainder of Laws of Utah 2015, Chapter 46, and the application of the provision to other persons or circumstances is not affected by the finding.

Revisor instructions Chapter 46, 2015 General Session

Enacted by Chapter 46, 2015 General Session

Chapter 21
Agreements to Provide State Services

Part 1
General Provisions

63G-21-101 Title.

This chapter is known as "Agreements to Provide State Services."

Enacted by Chapter 205, 2017 General Session

63G-21-102 Definitions.

As used in this chapter:

- (1) "Designated agency" means:
 - (a) the Governor's Office of Economic Opportunity;
 - (b) the Division of Wildlife Resources;
 - (c) the Department of Public Safety;
 - (d) the Division of Technology Services; or
 - (e) the Department of Workforce Services.
- (2)
 - (a) "State service" means a service or benefit regularly provided to the public by a designated agency.
 - (b) "State service" includes:
 - (i) for the Governor's Office of Economic Opportunity or the Division of Technology Services, public high-speed Internet access;

- (ii) for the Division of Wildlife Resources, fishing, hunting, and trapping licenses;
 - (iii) for the Department of Public Safety, fingerprinting, an online driver license renewal, online appointment scheduling, an online motor vehicle record request, and an online change of address with the Driver License Division; and
 - (iv) for the Department of Workforce Services, online job searches, verification of submission for benefits administered by the Department of Workforce Services, online unemployment applications, online food stamp applications, and online appointment scheduling.
- (3) "USPS" means the United States Postal Service.

Amended by Chapter 282, 2021 General Session
Amended by Chapter 344, 2021 General Session

Part 2

Agreements with United States Postal Service

63G-21-201 Limited authorization to provide state services at post office locations.

- (1) If allowed by federal law, a designated agency may negotiate and enter into an agreement with USPS that allows USPS to provide one or more state services at one or more post office locations within the state.
- (2) The designated agency shall ensure that the agreement described in Subsection (1) includes:
 - (a) the term of the agreement, which may not extend beyond July 1, 2028;
 - (b) provisions to ensure the security of state data and resources;
 - (c) provisions to provide training to USPS employees on how to provide each state service in the agreement;
 - (d) except as provided in Subsection (2)(e), provisions authorizing compensation to USPS for at least 100% of attributable costs of all property and services that USPS provides under the agreement; and
 - (e) if the agreement is between USPS and the Division of Wildlife Resources to sell fishing, hunting, or trapping licenses, provisions requiring compliance with Sections 23A-4-501 and 23A-4-502 regarding wildlife license agents, including remuneration for services rendered.
- (3) After one or more designated agencies enter into an agreement described in Subsection (1), the Governor's Office of Economic Opportunity shall create a marketing campaign to advertise and promote the availability of state services at each selected USPS location.

Amended by Chapter 34, 2023 General Session

Chapter 22

State Training and Certification Requirements

63G-22-101 Title.

This chapter is known as "State Training and Certification Requirements."

Enacted by Chapter 200, 2018 General Session

63G-22-102 Definitions.

As used in this chapter:

- (1) "Political subdivision" means:
 - (a) a county;
 - (b) a municipality, as defined in Section 10-1-104;
 - (c) a special district;
 - (d) a special service district;
 - (e) an interlocal entity, as defined in Section 11-13-103;
 - (f) a community reinvestment agency;
 - (g) a local building authority; or
 - (h) a conservation district.
- (2)
 - (a) "Public employee" means any individual employed by or volunteering for a state agency or a political subdivision who is not a public official.
 - (b) "Public employee" does not include an individual employed by or volunteering for a taxed interlocal entity.
- (3)
 - (a) "Public official" means:
 - (i) an appointed official or an elected official as those terms are defined in Section 63A-17-502;
or
 - (ii) an individual elected or appointed to a county office, municipal office, school board or school district office, special district office, or special service district office.
 - (b) "Public official" does not include an appointed or elected official of a taxed interlocal entity.
- (4) "State agency" means a department, division, board, council, committee, institution, office, bureau, or other similar administrative unit of the executive branch of state government.
- (5) "Taxed interlocal entity" means the same as that term is defined in Section 11-13-602.

Amended by Chapter 16, 2023 General Session

63G-22-103 State training and certification requirements.

Each state agency or political subdivision that provides any training or certification that any state agency or political subdivision requires a public employee or public official to complete shall present the training or make the training available in an online web-based format, which may include a live webinar, unless:

- (1) the training or certification:
 - (a) includes a physical or interactive component that, in the reasonable determination of the agency or political subdivision, the attendee can only complete in person; or
 - (b) takes place over consecutive full-day sessions; or
- (2) no required attendee will travel more than 50 miles from the attendee's primary residence or place of employment, whichever is closer to the training site, to attend the training.

Enacted by Chapter 200, 2018 General Session

Chapter 23
Property Donated to State by Public Official

63G-23-101 Title.

This chapter is known as "Property Donated to State by Public Official."

Enacted by Chapter 67, 2018 General Session

Superseded 7/1/2024

63G-23-102 Definitions.

As used in this chapter:

- (1) "Public official" means, except as provided in Subsection (3), the same as that term is defined in Section 36-11-102.
- (2) "Public official" includes a judge or justice of:
 - (a) the Utah Supreme Court;
 - (b) the Utah Court of Appeals; or
 - (c) a district court.
- (3) "Public official" does not include a local official or an education official as defined in Section 36-11-102.

Amended by Chapter 125, 2022 General Session

Effective 7/1/2024

63G-23-102 Definitions.

As used in this chapter:

- (1) "Public official" means, except as provided in Subsection (3), the same as that term is defined in Section 36-11-102.
- (2) "Public official" includes a judge or justice of:
 - (a) the Utah Supreme Court;
 - (b) the Utah Court of Appeals;
 - (c) a district court;
 - (d) a juvenile court; or
 - (e) the Business and Chancery Court.
- (3) "Public official" does not include a local official or an education official as defined in Section 36-11-102.

Amended by Chapter 158, 2024 General Session

63G-23-103 Gifts to the state.

- (1) A public official may accept a gift on behalf of the state if the public official, after accepting the gift, promptly:
 - (a) notifies the property administrator appointed under Subsection (2) for the branch of state government with which the public official is affiliated of the public official's acceptance of the gift; and
 - (b) remits the gift to the branch of state government with which the public official is affiliated.
- (2) The following persons shall select a property administrator for the person's branch of state government:
 - (a) for the executive branch, the governor or the governor's designee;
 - (b) for the legislative branch, the Legislative Management Committee or the Legislative Management Committee's designee; and
 - (c) for the judicial branch, the chief justice of the Supreme Court or the chief justice's designee.

- (3) A property administrator appointed under Subsection (2):
 - (a) shall manage the retention or disposal of a gift that a public official remits to the state under Subsection (1); and
 - (b) may reject a gift that a public official accepts on behalf of the state.
- (4) If a property administrator rejects a gift under Subsection (3)(b), the public official who accepted the gift shall promptly:
 - (a) return the gift; or
 - (b) dispose of the gift in a manner authorized by law.

Enacted by Chapter 67, 2018 General Session

Chapter 24 Board Vacancies and Conflicts Act

Part 1 General Provisions

63G-24-101 Title.

This chapter is known as the "Board Vacancies and Conflicts Act."

Enacted by Chapter 373, 2020 General Session

63G-24-102 Definitions.

As used in this chapter:

- (1) "Affiliation" means association with an entity, including association in the form of employment, ownership, shareholdership, or financial interest.
- (2) "Agency" means the same as that term is defined in Section 63G-4-103.
- (3) "Appointed board member" means an individual appointed by the governor, with the consent of the Senate, to serve on a rulemaking board.
- (4) "Nominee" means a person selected by the governor to fill a rulemaking board vacancy subject to the advice and consent of the Senate.
- (5)
 - (a) "Rulemaking board" means a board, committee, commission, or council:
 - (i) that has rulemaking authority; and
 - (ii) at least part of whose membership is appointed by the governor subject to the advice and consent of the Senate.
 - (b) "Rulemaking board" does not include:
 - (i) the State Board of Education; or
 - (ii) the Utah Retirement Board.
- (6) "Substantial interest" means the same as that term is defined in Section 67-16-3.

Amended by Chapter 352, 2020 General Session, (Coordination Clause)

Amended by Chapter 373, 2020 General Session, (Coordination Clause)

Enacted by Chapter 373, 2020 General Session

63G-24-103 Requirement to follow this chapter.

- (1) An applicant, a rulemaking board, and the governor's office shall follow the procedures for vacancies described in this chapter in order to fill a vacancy on a rulemaking board.
- (2) An appointed board member shall follow the procedures for conflicts of interest described in this chapter.

Enacted by Chapter 373, 2020 General Session

Part 2 Vacancies

63G-24-201 Notice.

- (1) A rulemaking board shall give public notice regarding a vacancy or expiring term on the rulemaking board on or before:
 - (a) 30 days before the day on which a departing appointed board member's or a continuing board member's term expires; or
 - (b) 10 days after the day on which the rulemaking board chair or vice chair receives written notice of a current appointed board member's intent to leave the board.
- (2)
 - (a) The governor's office shall post the notice described in Subsection (1) on the governor's website described in Subsection 67-1-2.5(4).
 - (b) A rulemaking board may post the notice described in Subsection (1) on the rulemaking board's website.

63G-24-202 Application.

- (1) The application period for an appointed board member shall last for a period of at least:
 - (a) 30 days for an open position due to an expiring term; or
 - (b) 14 days for an open position due to a vacancy occurring for a reason other than the expiration of a term.
- (2) An applicant shall use the application feature on the governor's website described in Subsection 67-1-2.5(4) to apply for a vacant appointed board member position unless the notice described in Section 63G-24-201 specifies a different application process.
- (3) The application feature described in Subsection (2) shall require the applicant to provide information including:
 - (a) the applicant's name;
 - (b) the applicant's current employment; and
 - (c) the applicant's affiliation with public and private entities, including employment, in the five years on or before the day on which the applicant submits the application.

63G-24-203 Governor selection of nominee.

- (1) The governor shall select a nominee based on:
 - (a) the applicant's fitness for office; and
 - (b) statutory requirements.
- (2) The governor shall follow the process described in Section 67-1-2 to notify the Senate of a nominee for an appointed board member vacancy.

Enacted by Chapter 373, 2020 General Session

63G-24-204 Public comment on nominee.

- (1) Within seven days after the day on which the governor selects a nominee, the governor's office shall post the information about the nominee described in Subsection 63G-24-202(3) on the governor's website described in Subsection 67-1-2.5(4).
- (2) A rulemaking board may post the information about the nominee described in Subsection 63G-24-202(3) on the rulemaking board's website.
- (3) Before posting the information described in Subsection 63G-24-202(3), the governor's office and the rulemaking board shall redact personal information about the nominee, including the nominee's home address, date of birth, email address, and phone number.
- (4) The governor's website described in Subsection 67-1-2.5(4) shall include information on how to publicly comment on a nominee no fewer than seven days before the first day on which the governor's office will accept applications for a position.
- (5) The governor's office shall permit public comment for no fewer than 30 days after the day on which the governor's office posts the information about the nominee.

Enacted by Chapter 373, 2020 General Session

63G-24-205 Senate confirmation of nominee.

The Senate shall follow the process described in Section 67-1-2 to confirm a nominee to fill an appointed board member vacancy.

Enacted by Chapter 373, 2020 General Session

**Part 3
Conflicts of Interest**

63G-24-301 Disclosure of conflicts.

- (1) An appointed board member shall disclose the nature of any position or financial interest the appointed board member holds in any business entity that is subject to the regulation of the agency, including if the relationship of the appointed board member to the business entity is that of:
 - (a) an officer;
 - (b) a director;
 - (c) an agent;
 - (d) an employee; or
 - (e) an owner of a substantial interest.
- (2) Within 10 days after the day on which an appointed board member is appointed to serve on a rulemaking board, the appointed board member shall make the disclosure described in Subsection (1) in writing to the rulemaking board.
- (3) An appointed board member shall, if there are changes to items the appointed board member is required to disclose under Subsection (1), update the disclosure before voting on a measure the rulemaking board takes with respect to a business entity described in Subsection (1).

Enacted by Chapter 373, 2020 General Session

63G-24-302 Effect on voting.

Disclosure under Section 63G-24-201 does not require an appointed board member to abstain from voting unless the appointed board member holds a substantial interest in a business entity that the vote will impact.

Enacted by Chapter 373, 2020 General Session

Chapter 25
State Agency Quality Service Act

Part 1
General Provisions

63G-25-101 Definitions.

As used in this chapter, "state agency" means an executive branch:

- (1) department;
- (2) division; or
- (3) office.

Enacted by Chapter 319, 2020 General Session

Part 2
Citizen Feedback Program

63G-25-201 Option to gather feedback.

- (1) A state agency may gather feedback from members of the public whom the state agency serves to allow the state agency to assess the quality of service the state agency provides and identify areas for improvement.
- (2) A state agency that chooses to gather the feedback described in Subsection (1) shall:
 - (a) request members of the public evaluate the quality of the following, as applicable:
 - (i) programs and services;
 - (ii) facilities, including access, location, signs, and cleanliness;
 - (iii) staff, including staff courtesy, friendliness, and knowledge;
 - (iv) communications, including toll-free telephone access, ability to speak to a live person, and the efficacy of any communications by mail, electronic mail, text message, or mobile application;
 - (v) website, including the ease of access to and use of the website, mobile access to the website, and information accessible through the website;
 - (vi) complaint handling, including the ease of filing a complaint and the timeliness of a response;
 - (vii) timeliness, including wait times for service in person, by phone, by mail, or through a website; and

- (viii) brochures or other printed information, including the accuracy of the information; and
- (b) use one or more of the following methods to gather the feedback:
 - (i) a survey;
 - (ii) a mobile application;
 - (iii) a web application; or
 - (iv) another method the state agency determines appropriate.

Enacted by Chapter 319, 2020 General Session

63G-25-202 Citizen feedback annual report.

- (1) The Governor's Office of Planning and Budget shall prepare an annual report that contains a summary of any feedback that state agencies gathered in accordance with Section 63G-25-201 during the preceding calendar year.
- (2) On or before July 1, the Governor's Office of Planning and Budget shall:
 - (a) provide an electronic copy of the report described in Subsection (1) to each legislator; and
 - (b) make the report described in Subsection (1) accessible to the public.

Amended by Chapter 382, 2021 General Session

Chapter 26

Government Interaction with Nonprofit Entities

63G-26-101 Title.

This chapter is known as "Government Interaction With Nonprofit Entities."

Enacted by Chapter 393, 2020 General Session

63G-26-102 Definitions.

As used in this chapter:

- (1) "Nonprofit entity" means an entity exempt from federal income tax under Section 501(c), Internal Revenue Code, or that has submitted an application with the Internal Revenue Service for recognition of an exemption under Section 501(c), Internal Revenue Code.
- (2) "Personal information" means a record or other compilation of data that identifies a person as a donor to a nonprofit entity.
- (3) "Public agency" means a state or local government entity, including:
 - (a) a department, division, agency, office, commission, board, or other government organization;
 - (b) a political subdivision, including a county, city, town, special district, or special service district;
 - (c) a public school, school district, charter school, or public higher education institution; or
 - (d) a judicial or quasi-judicial body.

Amended by Chapter 416, 2024 General Session

Amended by Chapter 438, 2024 General Session

63G-26-103 Protection of personal information.

- (1) Except as provided in Subsections (2), (3), and (4), a public agency may not:

- (a) require an individual who is a donor to a nonprofit entity to provide the public agency with personal information or otherwise compel the release of personal information;
 - (b) require a nonprofit entity to provide the public agency with personal information or compel the nonprofit entity to release personal information;
 - (c) release, publicize, or otherwise publicly disclose personal information in possession of a public agency; or
 - (d) request or require a current or prospective contractor or grantee of the public agency to provide the public agency with a list of nonprofit entities to which the current or prospective contractor or grantee has provided financial or nonfinancial support.
- (2) Subsection (1) does not apply to:
- (a) a disclosure of personal information required under Title 20A, Election Code, or Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act;
 - (b) the release of personal information by a public agency if the information is voluntarily released to the public by the individual or nonprofit entity to which the personal information relates, including:
 - (i) as part of public comment or in a public meeting; or
 - (ii) in another manner that is publicly accessible;
 - (c) a disclosure of personal information pursuant to a lawful warrant or court order issued by a court with jurisdiction;
 - (d) a lawful request for discovery of personal information in litigation or a criminal proceeding if the court with jurisdiction:
 - (i) finds that the requestor demonstrates a compelling need for the personal information by clear and convincing evidence; and
 - (ii) issues a protective order barring disclosure of personal information to a person not named in the litigation;
 - (e) admission of personal information as relevant evidence before a court with jurisdiction, except that a court may not publicly reveal personal information absent a specific finding of good cause;
 - (f) a nonprofit created under Title 11, Chapter 13a, Governmental Nonprofit Corporations Act;
 - (g) disclosure of personal information to the Department of Financial Institutions to conduct regulatory oversight of federally insured depositories to comply with the requirements of statute, rule, or regulation;
 - (h) disclosure of personal information to the Insurance Department to conduct regulatory oversight of persons licensed under Title 31A, Insurance Code, to comply with the requirements of statute, rule, or regulation; or
 - (i) disclosure of personal information that is required, requested, or released by the following divisions of the Department of Commerce, provided that each division may only use personal information in connection with the specific request to which the personal information relates and for a related proceeding:
 - (i) by the Division of Consumer Protection in accordance with the Division of Consumer Protection's administration and enforcement of a chapter described in Section 13-2-1;
 - (ii) by the Division of Corporations and Commercial Code in accordance with the Division of Corporations and Commercial Code's authority under Title 13, Chapter 1a, Division of Corporations and Commercial Code, and in the course of the Division of Corporations and Commercial Code's administration of:
 - (A) Title 3, Uniform Agricultural Cooperative Association Act;
 - (B) Title 16, Corporations;
 - (C) Title 42, Chapter 2, Conducting Business Under Assumed Name;

- (D) Title 48, Unincorporated Business Entity Act;
 - (E) Title 70, Chapter 3a, Registration and Protection of Trademarks and Service Marks Act;
and
 - (F) Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions; and
- (iii) by the Division of Securities to conduct regulatory oversight of persons regulated under Title 61, Chapter 1, Utah Uniform Securities Act, to comply with the requirements of statute, rule, or regulation.
- (3) Subsections (1)(a), (b), and (d) do not apply to:
- (a) the request or use of personal information necessary to the State Tax Commission's administration of tax or motor vehicle laws, except that the State Tax Commission may only use personal information in connection with the administration of tax or motor vehicle laws or for a related proceeding; or
 - (b) access to personal information by the Office of the Legislative Auditor General to conduct an audit authorized under Utah Constitution, Article VI, Section 33, and Section 36-12-15, or the state auditor's office to conduct an audit authorized under Title 67, Chapter 3, Auditor, except the legislative auditor general or state auditor may only use the personal information in connection with the specific audit to which the request relates.
- (4) Subsection (1) does not apply to disclosure of a contributor to a sponsoring organization, as those terms are defined in Section 41-1a-1601.

Amended by Chapter 416, 2024 General Session

63G-26-104 Enforcement -- Penalty.

- (1)
- (a) A person whose personal information is recklessly provided or disclosed by a public agency in violation of this chapter may bring a civil action for appropriate injunctive relief, damages, or both.
 - (b) When a court awards damages under this section, the court shall order:
 - (i) an amount of not less than \$2,500 to compensate for injury or loss caused by each violation of this chapter; or
 - (ii) for an intentional violation of this chapter, an amount not to exceed three times the amount described in Subsection (1)(b)(i).
- (2) A court may award court costs and attorney fees to a person that brings an action described in Subsection (1) if the person prevails in that action.
- (3) A person that knowingly violates a provision of Section 63G-26-103 is guilty of a class C misdemeanor, punishable by imprisonment for not more than 90 days or a fine of not more than \$1,000, or both.

Amended by Chapter 416, 2024 General Session

63G-26-105 Limitations on regulation by a public agency.

A public agency may not impose a requirement on the registration or maintenance of a nonprofit entity that is more restrictive or expansive than the requirements authorized by Utah Code or federal law.

Enacted by Chapter 393, 2020 General Session

Chapter 27 Public Contract Boycott Restrictions

Part 1 General Provisions

63G-27-102 Definitions.

As used in this chapter:

- (1) "Boycott action" means refusing to deal, terminating business activities, or limiting commercial relations.
- (2) "Boycott of the State of Israel" means engaging in a boycott action targeting:
 - (a) the State of Israel; and
 - (b)
 - (i) companies or individuals doing business in or with the State of Israel; or
 - (ii) companies authorized by, licensed by, or organized under the laws of the State of Israel to do business.
- (3) "Boycotted company" means a company that:
 - (a) engages in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture;
 - (b) engages in, facilitates, or supports the manufacture, distribution, sale, or use of firearms;
 - (c) does not meet or commit to meet environmental standards, including standards for eliminating, reducing, offsetting, or disclosing greenhouse gas-emissions, beyond applicable state and federal law requirements; or
 - (d) does not facilitate or commit to facilitate access to abortion or sex characteristic surgical procedures.
- (4)
 - (a) "Company" means a corporation, partnership, limited liability company, or similar entity.
 - (b) "Company" includes any wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of an entity described in Subsection (4)(a).
- (5) "Economic boycott" means, without an ordinary business purpose:
 - (a) engaging in a boycott action targeting:
 - (i) a boycotted company; or
 - (ii) another company because the company does business with a boycotted company; or
 - (b) taking an action intended to penalize, inflict economic harm to, or change or limit the activities of:
 - (i) a boycotted company; or
 - (ii) another company because the company does business with a boycotted company.
- (6)
 - (a) "Ordinary business purpose" means a purpose that is related to business operations.
 - (b) "Ordinary business purpose" does not include a purpose that is solely related to furthering social, political, or ideological interests.
- (7) "Public entity" means the state or a political subdivision of the state, including each department, division, office, board, commission, council, authority, or institution of the state or a political subdivision of the state.

Amended by Chapter 243, 2023 General Session

Part 2 Prohibitions

63G-27-201 Prohibition on contracting.

- (1) Except as provided in Subsection (3), a public entity may not enter into a contract with a company to acquire or dispose of a good or service, including supplies, information technology, or construction services, unless:
 - (a) the contract includes a written certification that the company is not currently engaged in:
 - (i) a boycott of the State of Israel; or
 - (ii) an economic boycott;
 - (b) the company agrees not to engage in a boycott of the State of Israel for the duration of the contract; and
 - (c) the company agrees to notify the public entity in writing if the company begins engaging in an economic boycott.
- (2) A company's notice under Subsection (1)(c) may be grounds for termination of the contract.
- (3) This section does not:
 - (a) apply to:
 - (i) a contract with a total value of less than \$100,000; or
 - (ii) a contract with a company that has fewer than 10 full-time employees; or
 - (b) prohibit a public entity from entering into a contract with a company that engages in an economic boycott if:
 - (i) there is no economically practicable alternative available to the public entity to:
 - (A) acquire or dispose of the good or service; or
 - (B) meet the public entity's legal duties to issue, incur, or manage debt obligations, or deposit, keep custody of, manage, borrow, or invest funds; or
 - (ii) the company engages in the economic boycott to comply with federal law.

Amended by Chapter 243, 2023 General Session

63G-27-202 Prohibition on interference with state programs and commercial relationships.

- (1) A person may not take action to penalize or threaten to penalize a company because the company enters into a contract that complies with Subsections 63G-27-201(1)(a)(ii) or (c).
- (2) A person who takes an action or makes a threat in violation of Subsection (1) interferes with the state's interest in administering state programs and maintaining commercial relationships.

Enacted by Chapter 243, 2023 General Session

Chapter 28 Olympic and Paralympic Winter Games Act

Part 1 General Provisions

63G-28-101 Definitions.

As used in this chapter:

- (1) "Division" means the Division of Facilities Construction and Management created in Section 63A-5b-301.
- (2) "Fund" means the Olympic and Paralympic Venues Grant Fund.
- (3) "Games" means the 2030 or 2034 Olympic and Paralympic Winter Games.
- (4) "Games committee" means the Olympic and Paralympic Winter Games Coordination Committee created in Section 63G-28-201.
- (5) "Host agreement" means an agreement with a site selection committee that is made in connection with the selection of the state for the location of the games.
- (6) "Host assurance" means a written assurance to a site selection committee that is made in connection with the selection of the state for the location of the games.
- (7) "Host committee" means a nonprofit corporation, including a successor in interest, that may:
 - (a) provide an application and bid to a site selection committee for selection of the state as the location of the games; and
 - (b) execute an agreement with the United States Olympic and Paralympic Committee regarding a bid and the bid process to host the games.
- (8) "Site selection committee" means the International Olympic Committee or the International Paralympic Committee.
- (9) "State security" means a financial obligation undertaken by the state under a host agreement.

Amended by Chapter 406, 2024 General Session

Part 2

Olympic and Paralympic Winter Games Coordination Committee

63G-28-201 Olympic and Paralympic Winter Games Coordination Committee -- Creation -- Membership -- Chairs -- Quorum -- Compensation -- Staff.

- (1) There is created the Olympic and Paralympic Winter Games Coordination Committee to review and advise the Legislature on issues related to the state's hosting of the games.
- (2) The games committee consists of the following members:
 - (a) three members of the Senate, appointed by the president of the Senate, no more than two of whom may be from the same political party; and
 - (b) three members of the House of Representatives, appointed by the speaker of the House of Representatives, no more than two of whom may be from the same political party.
- (3)
 - (a) The president of the Senate shall designate a member of the Senate appointed under Subsection (2) as co-chair of the games committee.
 - (b) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (2) as co-chair of the games committee.
- (4)
 - (a) A majority of the members of the games committee constitutes a quorum.
 - (b) The action of a majority of a quorum constitutes action of the games committee.
- (5) A member of the games committee shall be paid salary and expenses in accordance with Section 36-2-2 and Legislative Joint Rules, Title 5, Chapter 3, Legislator Compensation.
- (6) The Office of Legislative Research and General Counsel shall:
 - (a) provide staff support to the games committee; and

- (b) consult with the Office of the Legislative Fiscal Analyst on fiscal issues reviewed by the games committee.

Enacted by Chapter 14, 2023 General Session

63G-28-202 Games committee duties.

- (1) The games committee shall:
 - (a) review issues related to:
 - (i) the state's bid to host or hosting of the games;
 - (ii) the impact of hosting the games on the state; and
 - (iii) any state security;
 - (b) review a report provided to the games committee under Section 63G-28-203;
 - (c) review a host agreement or host assurance provided to the games committee under Section 63G-28-401; and
 - (d) make recommendations to the Legislature regarding a host agreement, a host assurance, and the state's role in hosting the games.
- (2) The games committee may, during a regular meeting of the games committee, or a meeting scheduled by the games committee at the request of the division, provide recommendations regarding the fund and grants from the fund.

Amended by Chapter 406, 2024 General Session

63G-28-203 Host committee reports to games committee.

At least twice each year and at the request of the games committee, the host committee shall provide a report to the games committee regarding:

- (1) the state's bid to host or hosting of the games;
- (2) the projected budget for the games; and
- (3) the financial impact of the games on the state.

Enacted by Chapter 14, 2023 General Session

63G-28-204 Olympic and Paralympic Venues Grant Fund reports to games committee.

- (1) At least once a year and at the request of the games committee, the division shall provide a report to the games committee that:
 - (a) provides an update on the balances and condition of the fund;
 - (b) provides a summary of all grants being considered and grants awarded from the fund since the last report;
 - (c) lists in detail, for each grant awarded since the last report, the grant recipient, the amount of the grant, the purpose of the grant, and the terms of the grant; and
 - (d) discusses other matters related to the fund.
- (2) At the request of the division, the games committee may meet to review or provide recommendations to the division in relation to a potential grantee or other matters relating to the fund.

Enacted by Chapter 406, 2024 General Session

Part 3 Funds, Accounts, and Grant Programs

63G-28-301 Definitions.

As used in this part:

- (1) "Division" means the Division of Facilities Construction and Management created in Section 63A-5b-301.
- (2) "Fund" means the Olympic and Paralympic Venues Grant Fund.
- (3) "Improve" or "improvements" means the replacement or addition to infrastructure, buildings, building components, or facility equipment.
- (4) "Venue" means a facility:
 - (a) designed and currently approved under standards developed by a generally recognized sports federation to host world-class level, international winter sports competitions; and
 - (b) used for recreational, developmental, and competitive athletic training.
- (5) "Venue operator" means a person who:
 - (a) operates a venue that is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code; or
 - (b) owns a venue or operates a venue under contract with the public owner of the venue.

Renumbered and Amended by Chapter 14, 2023 General Session

63G-28-302 Olympic and Paralympic Venues Grant Fund.

- (1)
 - (a) There is created an expendable special revenue fund known as the "Olympic and Paralympic Venues Grant Fund."
 - (b) The fund shall consist of:
 - (i) money appropriated to the fund by the Legislature;
 - (ii) money donated to the fund from public or private individuals or entities; and
 - (iii) interest on fund money.
- (2)
 - (a) The division shall award grants from the fund to a venue operator to provide funding for construction, improvements, and repairs to a venue.
 - (b) The division may request or consider recommendations from the games committee when considering a grant as provided in Section 63G-28-202 and Section 63G-28-204.
- (3) A venue operator's application for a grant award under this section shall include:
 - (a) the number of venues the venue operator plans to construct, improve, or repair;
 - (b) the venue operator's proposed improvements, repairs, or construction plans for a venue;
 - (c) the estimated cost of the venue operator's proposed improvements, repairs, or construction plans for a venue;
 - (d) any plan to use funding sources in addition to a grant award under this section to construct, improve, or repair a venue;
 - (e) the amount of the requested grant award to fund the construction, improvements, or repairs for each venue; and
 - (f) existing or planned contracts or partnerships between the venue operator and other individuals or entities to complete venue construction, improvements, or repairs.
- (4) The division may only award and distribute a grant award to a venue operator that submits an application in accordance with Subsection (3).

- (5)
 - (a) As a condition of an award of a grant, the venue operator shall sign an agreement with the division governing:
 - (i) the venue operator's responsibilities for expending the grant award; and
 - (ii) the division's and the state's right to review and audit the venue operator's use of the grant award and the venue operator's performance under the grant award.
 - (b) The division shall ensure that the agreement contains:
 - (i) a requirement for an annual report and the required contents of the report in accordance with Subsection (6)(b);
 - (ii) a right for the division or the division's designee to visit and inspect the venue as often as needed before, during, and after construction or improvements, or repairs begin or are complete; and
 - (iii) an absolute right for the division, the state auditor, and the legislative auditor to access and audit the financial records relevant to the grant award.
- (6)
 - (a) A venue operator that receives a grant award under this section may only use the grant award to construct, improve, or repair a venue.
 - (b) A venue operator that receives a grant award under this section shall annually file a report with the division that details for the immediately preceding calendar year:
 - (i) the construction, improvements, and repairs, in process or completed, that were wholly or partially funded by a grant award under this section;
 - (ii) the total dollar amount expended from the grant award;
 - (iii) an itemized accounting that describes how the venue operator expended the grant award;
 - (iv) the intended use for a grant award that has not been expended; and
 - (v) the results of any evaluations of venue construction, improvements, or repairs.

Amended by Chapter 406, 2024 General Session

Part 4 Agreements

63G-28-401 Governor authority to execute host agreement -- Legislative notice.

- (1) Subject to Subsection (3), the governor may:
 - (a) enter into a host agreement on behalf of the state that provides:
 - (i) state security for:
 - (A) amounts owed by the state to a site selection committee for claims by third parties arising out of or relating to the games; and
 - (B) a financial deficit accruing to the state as a result of hosting the games; and
 - (ii) other terms necessary for the state to host the games; and
 - (b) make a host assurance on behalf of the state that is necessary for the state to host the games.
- (2) The state security under a host agreement may not be paid until after:
 - (a) any security provided by the host committee or another person is expended and exhausted; and
 - (b) the limits of any available insurance policy are expended and exhausted.
- (3) The governor shall:

- (a) ensure a host agreement includes:
 - (i) a requirement that a signatory of the host agreement mitigate damages if the signatory breaches the host agreement;
 - (ii) a provision allowing the state to terminate the host agreement for another signatory's unlawful activity; and
 - (iii) other provisions that protect:
 - (A) the state against liability under the host agreement; and
 - (B) the state's financial assets; and
- (b) provide a copy of a host agreement or host assurance to the games committee and the Legislative Management Committee at least 72 hours before entering into the host agreement or making the host assurance.

Enacted by Chapter 14, 2023 General Session

63G-28-402 Host committee insurance agreements -- State liability under host committee agreements.

- (1) The host committee shall:
 - (a) list the state as an additional insured on any insurance policy purchased by the host committee to be in effect in connection with the preparation for and conduct of the games; and
 - (b) include in any agreement signed by the host committee that the state is not liable for the host committee's failure to perform the duties under the agreement.
- (2) An insurance policy or other agreement that violates Subsection (1) is void.

Enacted by Chapter 14, 2023 General Session

Chapter 29
Social Credit Score Prohibition Act

Part 1
General Provisions

63G-29-101 Definitions.

- (1)
 - (a) "Governmental entity" means:
 - (i) the state;
 - (ii) a county, city, town, school district, special district, special service district, or other political subdivision of the state; or
 - (iii) an independent entity.
 - (b) "Governmental entity" includes an agency, bureau, office, department, division, board, commission, institution, laboratory, or other instrumentality of an entity described in Subsection (1)(a).
- (2) "Independent entity" means the same as that term is defined in Section 63E-1-102.
- (3) "Members of a person's social network" means the people a person authorizes to be part of the person's social media communications and network.

- (4)
- (a) "Social credit score" means a numeric, alphanumeric, or alphabetic value or other categorization assigned to a person based on:
 - (i) the person's:
 - (A) compliance or noncompliance with government guidance;
 - (B) social media post;
 - (C) participation or membership in a lawful club, association, or union;
 - (D) political affiliation; or
 - (E) employment industry or employer; or
 - (ii) the identity of the members of the person's social network.
 - (b) "Social credit score" does not include:
 - (i) a consumer report as defined in 15 U.S.C. Sec. 1681a;
 - (ii) compliance or noncompliance with statute, administrative rule, or other law; or
 - (iii) a numeric, alphanumeric, or alphabetic value or other categorization assigned to a person for:
 - (A) purposes of education, training, or job performance assessment;
 - (B) purposes of a contest or competition;
 - (C) purposes of hiring a prospective employee or independent contractor;
 - (D) purposes of issuance or taking an action against a professional license, certification, registration, or permit;
 - (E) purposes of a professional or tax audit; or
 - (F) use by a financial institution or an affiliate of a financial institution regulated under Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. Sec. 6801 et seq., to determine risk of loss, impairment, or default.

Amended by Chapter 438, 2024 General Session

Part 2 Prohibitions

63G-29-201 Social credit score prohibition.

A governmental entity may not use, enforce, provide data for use in, or otherwise participate in the creation or use of a system that, based on a social credit score, discriminates against, advocates for, or causes adverse or preferential treatment of a person.

Enacted by Chapter 76, 2023 General Session

Chapter 30 Public Notice

63G-30-101 Definitions.

As used in this chapter:

- (1) "Affected area" means:

- (a) the area that is designated in statute, county ordinance, or municipal ordinance as the area for which public notice must be provided;
 - (b) in relation to a statute, if no affected area is designated in the statute, the affected area is the state;
 - (c) in relation to a county ordinance, if no affected area is designated in the county ordinance, the affected area is the county; or
 - (d) in relation to a municipal ordinance, if no affected area is designated in the municipal ordinance, the affected area is the municipality.
- (2) "Government official" means an individual elected or appointed to a state office, county office, municipal office, school board, school district office, special district office, or special service district office.
- (3) "Notice summary statement" means a statement that includes the following in relation to a public notice:
- (a) a title that accurately describes the purpose or subject of the public notice;
 - (b) the name of the public body, or the name and title of the government official, that provides the public notice;
 - (c) a statement that clearly describes the matter for which the public notice is given;
 - (d) a general description of the area to which the public notice relates;
 - (e) the dates and deadlines applicable to the matter for which the public notice is given; and
 - (f) information specifying where a person may obtain a copy of the complete public notice, including:
 - (i) the web address for the Utah Public Notice Website;
 - (ii) if the public body or government official maintains a public website, the web address where the public notice is located;
 - (iii) the address of a physical location where a copy of the public notice may be viewed or obtained; and
 - (iv) a telephone number that an individual may call to request a copy of the public notice.
- (4) "Public body" means the same as that term is defined in Section 52-4-103.
- (5) "Public location" means:
- (a) a location that is open to the general public, regardless of whether the location is owned by a public entity, a private entity, or an individual; or
 - (b) a location that is not open to the general public, but where the notice is clearly visible to, and may easily be read by, an individual while the individual is present in a location described in Subsection (5)(a).
- (6) "Public notice" means a notice that is required to be provided to the public by a public body or a government official.
- (7) "Utah Public Notice Website" means the Utah Public Notice Website created in Section 63A-16-601.

Enacted by Chapter 435, 2023 General Session

63G-30-102 Public notice classifications and requirements.

- (1) A public body or a government official that is required to provide a class A notice:
- (a) shall publish the public notice on the Utah Public Notice Website;
 - (b) shall publish the public notice on the public body's or government official's official website, if the public body or government official:
 - (i) maintains an official website; and
 - (ii) has an annual operating budget of \$250,000 or more; and

- (c) except as provided in Subsection (4), and subject to Subsection (5), post the public notice in connection with the affected area as follows:
 - (i) if the affected area is a municipality with a population of less than 2,000, in a public location in or near the affected area that is reasonably likely to be seen by residents of the affected area;
 - (ii) if the affected area is a proposed municipality with a population of less than 2,000, in a public location in or near the affected area that is reasonably likely to be seen by residents of the affected area;
 - (iii) if the affected area is an area other than an area described in Subsections (1)(c)(i), (1)(c)(ii), or (1)(c)(iv) through (viii), in a public location in or near the affected area that is reasonably likely to be seen by:
 - (A) residents of the affected area; or
 - (B) if there are no residents within the affected area, individuals who pass through or near the affected area;
 - (iv) if the affected area is a county, in a public location within the county that is reasonably likely to be seen by residents of the county;
 - (v) if the affected area is a municipality with a population of 2,000 or more, or a proposed municipality with a population of 2,000 or more, in a public location within the municipality or proposed municipality that is reasonably likely to be seen by residents of the municipality or proposed municipality;
 - (vi) if the affected area is a public street, on or adjacent to the public street;
 - (vii) if the affected area is an easement:
 - (A) on or adjacent to the easement; or
 - (B) in a public location that is reasonably likely to be seen by persons who are likely to be impacted by the easement; or
 - (viii) if the affected area is an interlocal entity, within, or as applicable near, each jurisdiction that is part of the interlocal entity, in accordance with the provisions of this Subsection (1) that apply to that jurisdiction.
- (2) Subject to Subsection (5), a public body or a government official that is required to provide a class B notice shall:
 - (a) comply with the requirements described in Subsection (1) for a class A notice;
 - (b) if a statute, county ordinance, or municipal ordinance requires that the notice be provided for a designated geographic area, mail or otherwise deliver the public notice or a notice summary statement to each residence within, and, in accordance with Subsection (3), to each owner of real property located within, the designated geographic area; and
 - (c) if a statute, county ordinance, or municipal ordinance requires that the notice be provided to one or more designated persons or real property owners, mail or otherwise deliver the public notice or a notice summary statement, in accordance with Subsection (3), to each designated person and real property owner.
- (3) When providing notice to a real property owner under Subsection (2)(b) or (c), the public body or government official shall:
 - (a) use the current residential or business address of the real property owner;
 - (b) if the public body or government official is not reasonably able to obtain the address described in Subsection (3)(a), use the last known address of the real property owner that the public body or government official is able to obtain via a reasonable inquiry into public records; or
 - (c) if the public body or government official is not reasonably able to obtain an address described in Subsection (3)(a) or (b), post the notice on the real property.

- (4) A government official, a public body, or any other body that is required to post notice under Subsection (1) is not required to comply with Subsection (1)(c) if:
 - (a) the affected area is the state;
 - (b) the body is a specified body, as defined in Section 52-4-103;
 - (c) the public body is the Legislature or a public body within the state legislative branch; or
 - (d) the government official is required to post the notice on behalf of a body described in Subsection (4)(b) or (c).
- (5) If a statute, ordinance, or rule requires a public body or government official to provide notice for a period of time:
 - (a) in relation to posting the notice on the Utah Public Notice Website, the requirement is not violated due to temporary technological issues that interrupt the posting, unless the posting is interrupted for more than 25% of the required posting time;
 - (b) in relation to posting the notice in a physical location, the requirement is fulfilled if:
 - (i) the notice is posted at or, except to the extent prohibited by law, before the beginning of the period of time;
 - (ii) the public body or government official does not remove the posting before the end of the period of time; and
 - (iii) until the end of the period of time, the public body or government official:
 - (A) periodically verifies that the notice remains in place; and
 - (B) replaces the notice within a reasonable time after discovering that the notice has been removed or damaged; and
 - (c) in relation to mailing, sending, or otherwise delivering notice to a person, the mailing is made at or, except to the extent prohibited by law, before, the beginning of the period of time.

Enacted by Chapter 435, 2023 General Session

Chapter 31 **Distinctions on the Basis of Sex**

Part 1 **General Provisions**

63G-31-101 Definitions.

As used in this chapter:

- (1)
 - (a) "Changing room" means a space designated for multiple individuals to dress or undress within the same space.
 - (b) "Changing room" includes:
 - (i) a dressing room, fitting room, locker room, or shower room; and
 - (ii) a restroom when a changing room contains or is attached to the restroom.
- (2)
 - (a) "Facility" means a publicly owned or controlled building, structure, or other improvement.
 - (b) "Facility" includes a subset of a publicly owned or controlled building, structure, or other improvement, including a restroom or locker room.
- (3) "Government entity" means:
 - (a) the state; or

- (b) any county, municipality, special district, special service district, or other political subdivision or administrative unit of the state, including:
 - (i) a state institution of higher education as defined in Section 53B-2-101; or
 - (ii) a local education agency as defined in Section 53G-7-401.
- (4) "Intersex individual" means the same as that term is defined in Section 26B-8-101.
- (5) "Men's restroom" means a restroom that is designated for the exclusive use of males and not females.
- (6)
 - (a) "Open to the general public" means that a privacy space is:
 - (i) freely accessible to a member of the general public;
 - (ii) accessible to an individual who has purchased a ticket, paid an entry fee, paid a membership fee, or otherwise paid to access the facility containing the relevant privacy space; or
 - (iii) accessible to a student of an institution of higher education described in Section 52B-2-101, either freely or as described in Subsection (6)(a)(ii).
 - (b) "Open to the general public" does not include a privacy space that is:
 - (i) only accessible to employees of a government entity; or
 - (ii) any area that is not normally accessible to the public.
- (7) "Privacy space" means a restroom or changing room within a publicly owned or controlled facility, where an individual has a reasonable expectation of privacy.
- (8) "Publicly owned or controlled" means that a government entity has at least a partial ownership interest in or has control of a facility, program, or event.
- (9)
 - (a) "Restroom" means any space that includes a toilet.
 - (b) "Restroom" includes:
 - (i) sex-designated men's restrooms;
 - (ii) sex-designated women's restrooms;
 - (iii) unisex restrooms; and
 - (iv) single-occupant restrooms.
- (10) "Sex-designated" means that a facility, program, or event is designated specifically for males or females and not the opposite sex.
- (11) "Single-occupant" means, in relation to a single-occupant facility or privacy space, that the facility or privacy space:
 - (a) has floor-to-ceiling walls;
 - (b) has an entirely encased and locking door; and
 - (c) is designated for single occupancy.
- (12) "Unisex" means, in relation to a unisex facility or privacy space, that the facility or privacy space:
 - (a) is designated for the use of both sexes; or
 - (b) is not sex-designated.
- (13) "Women's restroom" means a restroom that is designated for the exclusive use of females and not males.

63G-31-102 Severability.

- (1) If any provision of this chapter or the application of any provision of this part to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remainder of this chapter shall be given effect without the invalidated provision or application.

(2) The provisions of this chapter are severable.

Part 2

Distinctions on the Basis of Sex

63G-31-201 Distinctions on the basis of sex.

- (1) A government entity may not, on the basis of sex, exclude an individual from participation in, deny an individual from the benefits of, or subject an individual to a sex-based distinction in or under any government or otherwise publicly owned or controlled facility, program, or event, unless the distinction is substantially related to an important government objective.
- (2) Each government entity shall ensure the preservation of distinctions on the basis of sex that protect individual privacy and competitive opportunity, as described in this chapter.
- (3)
 - (a) As used in this Subsection (3), "athletic facility" does not include a privacy space.
 - (b) To preserve the individual privacy and competitive opportunity of females, an individual is not entitled to and may not access, use, or benefit from a government entity's athletic facility, program, or event if:
 - (i) the facility, program, or event is designated for females; and
 - (ii) the individual is not female.
 - (c) To preserve the individual privacy and competitive opportunity of males, an individual is not entitled to and may not access, use, or benefit from a government entity's athletic facility, program, or event if:
 - (i) the facility, program, or event is designated for males; and
 - (ii) the individual is not male.
- (4) Notwithstanding Subsections (1) through (3), this chapter does not apply to:
 - (a) the School Activity Eligibility Commission created in Section 53G-6-1003; or
 - (b) in the context of a student who has obtained the eligibility approval of the commission under Subsection 53G-6-1004(2) to participate in a gender-designated interscholastic activity that does not correspond with the sex designation on the student's birth certificate, as those terms are defined in Section 53G-6-1001.

63G-31-202 Sex-based distinctions to protect individual privacy.

A distinction on the basis of sex that provides separate accommodations for the sexes is substantially related to the important government objective of protecting individual privacy, including in the following contexts:

- (1) a privacy space; and
- (2) a correctional facility as defined in Section 77-16b-102.

63G-31-203 Sex-based distinctions to protect athletic health and competitive opportunity.

A distinction on the basis of sex to provide separate accommodations for the sexes is substantially related to the important government objective of protecting health and competitive opportunity in the availability or quality of an athletic venue, event, or program within the public education system.

63G-31-204 Prohibited sex-based distinctions.

The following actions within the public education system constitute a violation of Section 63G-31-201:

- (1) providing a sex-designated facility, program, or event of a higher quality to one sex and of a lesser quality to the opposite sex rather than ensuring equivalent quality or rotational sharing, including the use of athletic facilities or venues;
- (2) providing males or females preferred or more advantageous scheduling of facilities, programs, or events in comparison to the opposite sex rather than ensuring equivalent scheduling practices or rotational sharing, including the scheduling of athletic events or practices;
- (3) providing males or females with more sex-designated opportunities than the opposite sex in excess of a 10% disparity;
- (4) requiring males or females to participate or compete against the opposite sex in any sex-designated facility, program, or event; or
- (5) requiring, giving official authorization for, or knowingly allowing males or females to use a sex-designated facility in the presence of the opposite sex.

Part 3
Sex-based Distinctions in Privacy Spaces

63G-31-301 Sex-designated privacy spaces in public schools.

- (1) To preserve the individual privacy of male and female students in the public education system, a student may only access an operational sex-designated privacy space within a public school that is designated for student use if the student's sex corresponds with the sex designation of the privacy space.
- (2) For a student who makes a request to use a privacy space other than the sex-designated privacy space that corresponds with the student's sex because of the student's gender identity, as defined in Section 34A-5-102, or reasonable fear of bullying, the local education agency, as defined in Section 53E-1-102, shall coordinate with the student's parent or legal guardian to develop a privacy plan that provides the student with:
 - (a)
 - (i) reasonable access to a unisex or single-occupant facility; or
 - (ii) reasonable access to a faculty or staff restroom; or
 - (b) if the access described in Subsection (2)(a) is unavailable, reasonable access to private use of an otherwise sex-designated privacy space through staggered scheduling or another policy provision that provides for temporary private access.
- (3) An LEA satisfies the LEA's duties regarding student use of a privacy space under this chapter if the LEA:
 - (a) gives notice to students of the provisions of this section;
 - (b) takes administrative action to address violations of and promote compliance with this section; and
 - (c) develops a privacy plan in accordance with Subsection (2).
- (4) An individual may use the following evidence as a defense to an allegation that the student is not eligible to access and use a sex-designated privacy space under Subsection (1):

- (a) the student's unamended birth certificate that corresponds with the sex designation of privacy space, which may be supported with a review of any amendment history obtained under Section 26B-8-125; or
 - (b) documentation of a medical treatment or procedure that is consistent only with the sex designation of the privacy space.
- (5) Subsection (1) does not apply to:
- (a) a unisex or single-occupant facility; or
 - (b) an intersex individual.

63G-31-302 Sex-designated changing rooms in publicly owned facilities open to the general public.

- (1)
- (a) Except as provided in Subsection (1)(b), to preserve the individual privacy of males and females, an individual may only access an operational sex-designated changing room in a government entity's facility that is open to the general public if:
 - (i) the individual's sex corresponds with the sex designation of the changing room; or
 - (ii) the individual has:
 - (A) legally amended the individual's birth certificate to correspond with the sex designation of the changing room, which may be supported with a review of any amendment history obtained under Section 26B-8-125; and
 - (B) undergone a primary sex characteristic surgical procedure as defined in Section 58-67-102 to correspond with the sex designation of the changing room.
 - (b) Subsection (1)(a) does not apply to:
 - (i) a minor child who requires assistance to access or use the changing room that corresponds with the sex of the minor's parent, guardian, or relative;
 - (ii) a dependent minor, as defined in Section 76-5-110, or a dependent adult, as defined in Section 76-5-111 who requires assistance to access or use the changing room that corresponds with the sex of a caretaker;
 - (iii) an individual providing public safety services, including law enforcement, emergency medical services as defined in Section 26B-4-101, and fire protection;
 - (iv) an employee of a health care facility, as defined in Section 26B-2-201, to provide health care services to a patient of the health care facility; or
 - (v) an individual whose employment duties include the maintenance or cleaning of the changing room.
- (2) An individual in a changing room has a reasonable expectation of privacy, satisfying the privacy element of the offense of voyeurism in Section 76-9-702.7.
- (3) An individual who knowingly enters a changing room in violation of Subsection (1) commits the offense of criminal trespass under Section 76-6-206 if the individual enters or remains in the changing room under circumstances which a reasonable person would expect to likely cause affront or alarm to, on, or in the presence of another individual.
- (4) The surgical provision described in Subsection (1)(a)(ii) does not shield an individual from the offense of lewdness related to genitalia under Subsection 76-9-702(3) or 76-9-702.5(4).
- (5) An individual may use the following evidence as a defense against an allegation that the individual is not eligible to access and use a sex-designated changing room under Subsection (1):
- (a) for an individual whose birth sex corresponds with the sex designation of the changing room:

- (i) an individual's unamended birth certificate that corresponds with the sex designation of the changing room, which may be supported with a review of any amendment history obtained under Section 26B-8-125; or
- (ii) documentation of a medical treatment or procedure that is consistent only with the sex designation of the changing room; or
- (b) for an individual whose birth sex does not correspond with the sex designation of the changing room:
 - (i) the individual's amended birth certificate, which may be supported with a review of any amendment history obtained under Section 26B-8-125; and
 - (ii) documentation that demonstrates that the individual has undergone a primary sex characteristic surgical procedure as defined in Section 58-67-102.
- (6) Subsection (1) does not apply to:
 - (a) a unisex or single-occupant facility;
 - (b) a changing room that is not open to the general public; or
 - (c) an intersex individual.

63G-31-303 Unisex or single-occupant facilities.

The availability of a unisex facility or single-occupant facility satisfies a government entity's obligations regarding an individual who, because of the individual's gender identity, as defined in Section 34A-5-102, or reasonable fear of bullying, is uncomfortable using:

- (1) for a student, a privacy space in accordance with Section 63G-31-301; or
- (2) a changing room in accordance with Section 63G-31-302.

63G-31-304 Government entity facility compliance.

- (1) Except as provided under Section 53G-8-211, a government entity shall contact law enforcement if the entity receives a complaint or allegation regarding the following within a privacy space in a facility that is open to the general public:
 - (a) an offense of lewdness under Section 76-9-702;
 - (b) an offense of lewdness involving a child under Section 76-9-702.5;
 - (c) voyeurism under Section 76-9-702.7;
 - (d) loitering in a privacy space under Section 76-9-702.8; or
 - (e) for a changing room described in Section 63G-31-302, an offense of criminal trespass under Subsection 63G-31-302(2).
- (2) To preserve the individual privacy of males and females in privacy spaces:
 - (a) a government entity shall adopt a privacy compliance plan to address compliance with the government entity's duties under this chapter;
 - (b) for construction of a new facility, a government entity shall ensure that the new construction includes a single-occupant facility; and
 - (c) for existing privacy spaces, a government entity:
 - (i) shall consider the feasibility of retrofitting or remodeling to include:
 - (A) floor-to-ceiling walls and doors or similar privacy protections;
 - (B) curtains; or
 - (C) other methods of improving individual privacy within the facility that are comparable to the methods described in Subsections (2)(a)(i) and (ii); and
 - (ii) may reduce the number of fixtures that state law requires by up to 20% to provide adequate space for the retrofitting or remodeling described in Subsection (2)(a).

- (3) A government entity shall ensure sufficient sex-designated privacy spaces through compliance with Sections 15A-3-112 and 15A-3-304 regarding unisex facilities.

Part 4 Enforcement and Indemnification

63G-31-401.1 Government entity noncompliance.

- (1) The state auditor shall:
- (a) establish a process to receive and investigate alleged violations of this chapter by a government entity;
 - (b) provide notice to the relevant government entity of:
 - (i) each alleged violation of this chapter by the government entity; and
 - (ii) each violation that the state auditor determines to be substantiated, including an opportunity to cure the violation not to exceed 30 calendar days; and
 - (c) if a government entity fails to cure a violation in accordance with Subsection (1)(b)(ii), report the government entity's failure to:
 - (i) for a political subdivision as defined in Section 63G-7-102 or a charter school, the attorney general for enforcement under Subsection (2); or
 - (ii) for a state entity as defined in Section 67-4-2, the Legislative Management Committee.
- (2)
- (a) The attorney general shall:
 - (i) enforce this chapter against a political subdivision or charter school upon referral by the state auditor under Subsection (1)(c) by imposing a fine of up to \$10,000 per violation per day; and
 - (ii) deposit fines under Subsection (2)(a) into the General Fund.
 - (b) A political subdivision or charter school may seek judicial review of a fine that the attorney general imposes under this section to determine whether the fine is clearly erroneous.
- (3) A local education agency is not in violation of this chapter for a lawful application of Section 53G-8-211.

Enacted by Chapter 509, 2024 General Session

63G-31-402 Indemnification.

The attorney general shall defend and the state shall indemnify and hold harmless a government entity acting under color of state law to enforce this chapter for any claims or damages, including court costs and attorney fees that:

- (1) arise as a result of this chapter; and
- (2) are not covered by the government entity's insurance policies or any coverage agreement that the State Risk Management Fund issues.

Chapter 32 Legal Personhood

63G-32-101 Definitions.

As used in this chapter:

- (1) "Body of water" means any natural or man-made accumulation of water, regardless of whether the accumulation of water is static or subject to a force that causes a hydrological current.
- (2) "Governmental entity" means:
 - (a) a court;
 - (b) the Legislature;
 - (c) the legislative body of a political subdivision; or
 - (d) another entity of the state or a political subdivision, if the entity has adjudicatory or rulemaking authority.
- (3) "Human being" means a member of the species classified as Homo sapiens;
- (4) "Land" means the solid terrestrial surface or subsurface of the earth.
- (5) "Legal personhood" means:
 - (a) the legal rights and obligations of an individual under the laws of this state; or
 - (b) the legal rights and obligations of a person other than an individual under the laws of this state.
- (6) "Political subdivision" means the same as that term is defined in Section 63G-7-102.
- (7) "Real property" means any building, fixture, improvement, appurtenance, structure, or other development that is affixed permanently to land.
- (8) "State" means the same as that term is defined in Section 63G-7-102.

Enacted by Chapter 451, 2024 General Session

63G-32-102 Legal personhood restricted.

Notwithstanding any other provision of law, a governmental entity may not grant legal personhood to, nor recognize legal personhood in:

- (1) artificial intelligence;
- (2) an inanimate object;
- (3) a body of water;
- (4) land;
- (5) real property;
- (6) atmospheric gases;
- (7) an astronomical object;
- (8) weather;
- (9) a plant;
- (10) a nonhuman animal; or
- (11) any other member of a taxonomic domain that is not a human being.

Enacted by Chapter 451, 2024 General Session

Chapter 33
Free Exercise of Religion

Part 1
General Provisions

63G-33-101 Definitions.

As used in this chapter:

- (1) "Demonstrates" means to produce the evidence necessary to meet, and to meet, the burden of persuasion.
- (2) "Free exercise of religion" means the right to act or refuse to act in a manner substantially motivated by a sincerely held religious belief, regardless of whether the exercise is compulsory or central to a larger system of religious belief.
- (3) "Government action" includes:
 - (a) a law, statute, ordinance, rule, policy, order, or other assertion of governmental authority;
 - (b) the application of a law, statute, ordinance, rule, policy, order, or other assertion of governmental authority;
 - (c) any action taken by, or on behalf of, a government entity;
 - (d) action taken by a person other than a government entity to:
 - (i) enforce a law, statute, ordinance, rule, policy, order, or other assertion of governmental authority;
 - (ii) compel a government entity to act;
 - (iii) prohibit a government entity from acting; or
 - (iv) utilize an administrative or judicial proceeding of a government entity, or an instrumentality or function of a government entity, to exert government power, authority, or influence.
- (4)
 - (a) "Government entity" means:
 - (i) the state;
 - (ii) a court;
 - (iii) a county, city, town, metro township, school district, special district, special service district, or other political subdivision of the state;
 - (iv) an independent entity;
 - (v) any person, when acting under color of state law; or
 - (vi) an employee or agent of an entity described in Subsections (4)(a)(i) through (v) or Subsection (4)(b) who is acting in the capacity of an employee or agent of the entity.
 - (b) "Government entity" includes an agency, bureau, office, department, division, board, commission, institution, laboratory, or other instrumentality of a person described in Subsection (4)(a).
- (5) "Independent entity" means the same as that term is defined in Section 63E-1-102.
- (6)
 - (a) "Substantially burden" means that government action, directly or indirectly:
 - (i) constrains, limits, or denies the free exercise of religion by a person; or
 - (ii) compels a person to act, or fail to act, in a manner that is contrary to the person's free exercise of religion.
 - (b) "Substantially burden" includes:
 - (i) any of the following in response to, or as a consequence of, the person's free exercise of religion:
 - (A) withholding a government benefit;
 - (B) assessing criminal, civil, or administrative penalties or damages; or
 - (C) excluding a person from a government program or from access to a government facility or service; and
 - (ii) a burden described in Subsections (6)(a) and (b)(i), regardless of whether the burden is:
 - (A) imposed by:

- (I) law, statute, ordinance, rule, policy, order, or other assertion of governmental authority;
- (II) the application of law, statute, rule, policy, order, or other assertion of governmental authority; or
- (III) any other means;
- (B) applied or enforced by, or on behalf of, a government entity; or
- (C) applied or enforced by, or on behalf of, a person other than a government entity to:
 - (I) enforce a law, statute, ordinance, rule, policy, order, or other assertion of governmental authority;
 - (II) compel a government entity to act;
 - (III) prohibit a government entity from acting; or
 - (IV) utilize an administrative or judicial proceeding of a government entity, or an instrumentality or function of a government entity, to exert government power, authority, or influence.

Enacted by Chapter 511, 2024 General Session

Part 2 Free Exercise of Religion

63G-33-201 Free exercise of religion -- Limitations on burdens imposed by government -- Claims or defenses -- Attorney fees and costs.

- (1) The free exercise of religion is a fundamental right and applies to all government action, including action that is facially neutral.
- (2) Except as provided in Subsection (3):
 - (a) a government entity may not substantially burden the free exercise of religion of a person, regardless of whether the burden results from a rule of general applicability; and
 - (b) a person other than a government entity may not seek to apply or enforce government action against another person that substantially burdens the free exercise of religion of the other person, regardless of whether the burden results from a rule of general applicability.
- (3) A government entity or government action may substantially burden a person's free exercise of religion only if the government entity, or any other person seeking to enforce government action, demonstrates that the burden on the person's free exercise of religion is:
 - (a) essential to furthering a compelling governmental interest; and
 - (b) the least restrictive means of furthering the compelling governmental interest.
- (4) A person whose free exercise of religion is burdened in violation of this section:
 - (a) may assert the violation as a claim or defense in a judicial or administrative proceeding to obtain relief, regardless of whether a government entity is a party to the proceeding; and
 - (b) is not required to exhaust administrative remedies before bringing a claim, or raising a defense, described in this Subsection (4).
- (5)
 - (a) Except as provided in Subsection (5)(b), a person may not bring an action under this section against a government entity described in Subsections 63G-33-101(4)(a)(i) through (iii) unless, at least 60 days before the day on which the person brings the action, the person provides written notice to the government entity, in accordance with Subsections 63G-7-401(3)(b) through (d), that:

- (i) states that the person intends to bring an action against the entity for a violation of this section;
 - (ii) describes the government action that has burdened or will burden the person's free exercise of religion; and
 - (iii) describes the manner in which the government action burdens or will burden the person's free exercise of religion.
- (b) Subsection (5)(a) does not apply if the government action alleged in the action:
- (i) is ongoing, and complying with Subsection (5)(a) will place an undue hardship on the person or increase the harm suffered by the person; or
 - (ii) is likely to occur or reoccur before the end of the 60-day period described in Subsection (5)(a).
- (6) A person who prevails in an action to enforce the provisions of this section against a government entity is entitled to recover reasonable attorney fees and costs.

Enacted by Chapter 511, 2024 General Session