

## S.B. 15

# GRAMA APPEALS PROCESS AND DOCUMENT REQUEST AMENDMENTS

SENATE FLOOR AMENDMENTS

AMENDMENT 3

JANUARY 26, 2006 9:59 AM

Senator **Curtis S. Bramble** proposes the following amendments:

1. *Page 1, Lines 14 through 15:*

- 14           ▶ provides that a governmental entity need not fulfill a record request if the record requested is accessible in the same physical form and content in a public publication produced by the governmental entity and if the governmental entity provides the requester with the publication and specifies where the record may be found in the publication;
- 15           = ▶ designates a request for a record that relates to a notice of claim under the Governmental Immunity Act of Utah as an extraordinary circumstance;

2. *Page 1, Lines 16 through 17:*

- 16           ▶ requires that appeals be heard by the state records committee before being appealed to the judiciary unless both the requester and the governmental entity agree, in writing, to make an appeal directly to the judiciary ;

3. *Page 2, Lines 35 through 36:*

- 35           63-2-401, as last amended by Chapter 280, Laws of Utah 1992
- 36           = 63-2-402, as last amended by Chapter 280, Laws of Utah 1992

4. *Page 2, Lines 39 through 41:*

- 40           {~~REPEALS:~~
- 41           — ~~63-2-402, as last amended by Chapter 280, Laws of Utah 1992~~}

5. *Page 4, Lines 94 through 99b*

*Senate 2nd Reading Amendments*  
*1-24-2006:*

- 94           (8) (a) [~~A~~] In response to a request, a governmental entity is not required to:
- 95           (i) create a record [in response to a request.]; or
- 96           (ii) fulfill a person's records request if {:
- 97           — ~~(A)}~~ the request unreasonably duplicates prior records requests from that person; or
- 98           {(B) the information requested is included} =
- (iii) fulfill a person's records request if:

(A) the record requested is accessible in the identical physical form and content in a public publication or product produced

99 by ~~{a}~~ the governmental entity receiving the request; §→ ~~{and}~~ =

(B) the governmental entity {receiving the request} provides the person

99a requesting the record with {a copy of or access to} the public publication or product ; and  
{informs the person} (C) the governmental entity specifies

99b where the {information} record can be found in the public publication or product ←§ =

6. Page 13, Lines 386 through 387:

386 (a) notice that the requester has the right to appeal the denial to {+} either {+} the records  
387 committee {+} or district court, {+} ;

7. Page 13, Line 398:

398 (9) The duties of the chief administrative officer under this section may be delegated.

= Section 5. Section 63-2-402 is amended to read:

**63-2-402. Option for appealing a denial.**

(1) If the chief administrative officer of a governmental entity denies a records request under Section 63-2-401, the requester may:

(a) appeal the denial to the records committee as provided in Section 63-2-403; or

(b) if both the requester and the governmental entity agree in writing, petition for judicial review in district court as provided in Section 63-2-404.

(2) Any person aggrieved by a determination of the chief administrative officer of a governmental entity under this chapter, including persons who did not participate in the governmental entity's proceeding, may appeal the determination to the records committee as provided in Section 63-2-403.

**Renumber remaining sections accordingly.**

8. Page 18, Line 538 through Page 19, Line 578:

538 {+} (2) (a) A requester may petition for judicial review by the district court of a  
539 governmental entity's determination as specified in Subsection 63-2-402 (1)(b). {+}

540 {+} (b) The requester shall file a petition no later than: {+}

541 {+} (i) 30 days after the governmental entity has responded to the records request by either  
542 providing the requested records or denying the request in whole or in part; {+}

543 {+} (ii) 35 days after the original request if the governmental entity failed to respond to the  
544 request; or {+}

545 {+} (iii) 45 days after the original request for records if: {+}

546 {+} (A) the circumstances described in Subsection 63-2-401(1)(b) occur; and {+}

547 {+} (B) the chief administrative officer failed to make a determination under Section

548 63-2-401. {+}

549 {+} (3) {+} {-(2)} The petition for judicial review shall be a complaint governed by the  
Utah

550 Rules of Civil Procedure and shall contain:

551 (a) the petitioner's name and mailing address;

552 (b) if a prior appeal was heard before the records committee, a copy of the records committee  
order from which the appeal is taken[~~if the~~  
553 petitioner brought a prior appeal to the records committee]; =

(c) if no prior appeal was heard before the records committee, a copy of an agreement to petition  
the district court for review that is signed by the requester and the governmental entity as required by  
Section 63-2-402(1)(b);

554 {-(c)} (d) the name and mailing address of the governmental entity that issued the initial  
555 determination with a copy of that determination;

556 {-(d)} (e) a request for relief specifying the type and extent of relief requested; and

557 {-(e)} (f) a statement of the reasons why the petitioner is entitled to relief.

558 {+} (4) {+} {-(3)} If the appeal is based on the denial of access to a protected record, the  
court

559 shall allow the claimant of business confidentiality to provide to the court the reasons for the  
560 claim of business confidentiality.

561 {+} (5) {+} {-(4)} All additional pleadings and proceedings in the district court are  
governed by

562 the Utah Rules of Civil Procedure.

563 {+} (6) {+} {-(5)} The district court may review the disputed records. The review shall be  
in

564 camera.

565 {+} (7) {+} {-(6)} The court shall:

566 (a) make its decision de novo, but allow introduction of evidence presented to the  
567 records committee;

568 (b) determine all questions of fact and law without a jury; and

569 (c) decide the issue at the earliest practical opportunity.

570 {+} (8) {+} {-(7)} (a) The court may, upon consideration and weighing of the various  
interests

571 and public policies pertinent to the classification and disclosure or nondisclosure, order the  
572 disclosure of information properly classified as private, controlled, or protected if the interest  
573 favoring access outweighs the interest favoring restriction of access.

574 (b) The court shall consider and, where appropriate, limit the requester's use and  
575 further disclosure of the record in order to protect privacy interests in the case of private or  
576 controlled records, business confidentiality interests in the case of records protected under  
577 Subsections 63-2-304(1) [~~and~~], (2), (40)(a)(ii), or (40)(a)(vi) and privacy interests or the public

578 interest in the case of other protected records.

9. Page 21, Lines 626 through 632:

626 (5) {+} If the requester concurs, the {+} ~~{A decision of the appeals board established by~~  
~~the}~~

627 political subdivision may {+} also provide for an additional level of administrative review to {+}  
{be

**628 ~~appealed to}~~ the records committee in accordance with Section 63-2-403.**

629 (6) Appeals of the decisions of the {+} **appeals boards established by political**

**630 subdivisions {+} ~~{records committee made under Subsection (5)}~~ shall be by petition for judicial**  
631 review to the district court. The contents of the petition for review and the conduct of the

632 proceeding shall be in accordance with {+} **Sections 63-2-402 and {+} ~~{Section}~~ 63-2-404.**

10. Page 22, Lines 659 through 662:

659 Title 63, Chapter 30d, Governmental Immunity Act of Utah.

660 ~~{Section 10. Repealer.~~

**661 ~~— This bill repeals:~~**

**662 ~~— Section 63-2-402, Option for appealing a denial} .~~**