

1 **RESOLVING GOVERNMENT RECORD DISPUTES**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Rebecca Chavez-Houck**

5 Senate Sponsor: Howard A. Stephenson

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to a process for resolving disputes concerning
10 government records.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ modifies duties of the State Records Committee;
- 14 ▶ authorizes the state auditor to submit to the State Records Committee a dispute
15 about the public release of a record in conjunction with the release of an audit
16 report; and
- 17 ▶ provides for judicial review of a State Records Committee determination of a record
18 dispute submitted by the state auditor.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **63G-2-502**, as last amended by Laws of Utah 2011, Chapter 340

26 **67-3-1**, as last amended by Laws of Utah 2014, Chapter 377

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

29 Section 1. Section **63G-2-502** is amended to read:

30 **63G-2-502. State Records Committee -- Duties.**

31 (1) The records committee shall:

32 (a) meet at least once every three months;

33 (b) review and approve schedules for the retention and disposal of records;

34 (c) hear appeals from determinations of access as provided by Section [63G-2-403](#);

35 [~~and~~]

36 (d) determine disputes submitted by the state auditor under Subsection [67-3-1\(15\)\(d\)](#);

37 and

38 [~~(e)~~] (e) appoint a chairman from among its members.

39 (2) The records committee may:

40 (a) make rules to govern its own proceedings as provided by Title 63G, Chapter 3,
41 Utah Administrative Rulemaking Act; and

42 (b) by order, after notice and hearing, reassign classification and designation for any
43 record series by a governmental entity if the governmental entity's classification or designation
44 is inconsistent with this chapter.

45 (3) The records committee shall annually appoint an executive secretary to the records
46 committee. The executive secretary may not serve as a voting member of the committee.

47 (4) Five members of the records committee are a quorum for the transaction of
48 business.

49 (5) The state archives shall provide staff and support services for the records
50 committee.

51 (6) If the records committee reassigns the classification or designation of a record or
52 record series under Subsection (2)(b), any affected governmental entity or any other interested
53 person may appeal the reclassification or redesignation to the district court. The district court
54 shall hear the matter de novo.

55 (7) The Office of the Attorney General shall provide counsel to the records committee
56 and shall review proposed retention schedules.

57 Section 2. Section **67-3-1** is amended to read:

58 **67-3-1. Functions and duties.**

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

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

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

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

66 (b) the revenues received or accrued;

67 (c) expenditures paid or accrued;

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

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

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

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

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

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

79 (A) honesty and integrity in fiscal affairs;

80 (B) accuracy and reliability of financial statements;

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

82 (D) compliance with the law.

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

85 (c) (i) The costs of the federal compliance portion of the audit may be paid from an

86 appropriation to the state auditor from the General Fund.

87 (ii) If an appropriation is not provided, or if the federal government does not
88 specifically provide for payment of audit costs, the costs of the federal compliance portions of
89 the audit shall be allocated on the basis of the percentage that each state entity's federal funding
90 bears to the total federal funds received by the state.

91 (iii) The allocation shall be adjusted to reflect any reduced audit time required to audit
92 funds passed through the state to local governments and to reflect any reduction in audit time
93 obtained through the use of internal auditors working under the direction of the state auditor.

94 (4) (a) Except as provided in Subsection (4)(b), the state auditor shall, in addition to
95 financial audits, and as the auditor determines is necessary, conduct performance and special
96 purpose audits, examinations, and reviews of any entity that receives public funds, including a
97 determination of any or all of the following:

98 (i) the honesty and integrity of all its fiscal affairs;

99 (ii) whether or not its administrators have faithfully complied with legislative intent;

100 (iii) whether or not its operations have been conducted in an efficient, effective, and
101 cost-efficient manner;

102 (iv) whether or not its programs have been effective in accomplishing the intended
103 objectives; and

104 (v) whether or not its management, control, and information systems are adequate,
105 effective, and secure.

106 (b) The auditor may not conduct performance and special purpose audits,
107 examinations, and reviews of any entity that receives public funds if the entity:

108 (i) has an elected auditor; and

109 (ii) has, within the entity's last budget year, had its financial statements or performance
110 formally reviewed by another outside auditor.

111 (5) The state auditor shall administer any oath or affirmation necessary to the
112 performance of the duties of the auditor's office, and may subpoena witnesses and documents,
113 whether electronic or otherwise, and examine into any matter that the auditor considers

114 necessary.

115 (6) The state auditor may require all persons who have had the disposition or
116 management of any property of this state or its political subdivisions to submit statements
117 regarding it at the time and in the form that the auditor requires.

118 (7) The state auditor shall:

119 (a) except where otherwise provided by law, institute suits in Salt Lake County in
120 relation to the assessment, collection, and payment of its revenues against:

121 (i) persons who by any means have become entrusted with public money or property
122 and have failed to pay over or deliver the money or property; and

123 (ii) all debtors of the state;

124 (b) collect and pay into the state treasury all fees received by the state auditor;

125 (c) perform the duties of a member of all boards of which the state auditor is a member
126 by the constitution or laws of the state, and any other duties that are prescribed by the
127 constitution and by law;

128 (d) stop the payment of the salary of any state official or state employee who:

129 (i) refuses to settle accounts or provide required statements about the custody and
130 disposition of public funds or other state property;

131 (ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling
132 board or department head with respect to the manner of keeping prescribed accounts or funds;
133 or

134 (iii) fails to correct any delinquencies, improper procedures, and errors brought to the
135 official's or employee's attention;

136 (e) establish accounting systems, methods, and forms for public accounts in all taxing
137 or fee-assessing units of the state in the interest of uniformity, efficiency, and economy;

138 (f) superintend the contractual auditing of all state accounts;

139 (g) subject to Subsection (8)(a), withhold state allocated funds or the disbursement of
140 property taxes from a state or local taxing or fee-assessing unit, if necessary, to ensure that
141 officials and employees in those taxing units comply with state laws and procedures in the

142 budgeting, expenditures, and financial reporting of public funds; and

143 (h) subject to Subsection (9), withhold the disbursement of tax money from any county,
144 if necessary, to ensure that officials and employees in the county comply with Section
145 [59-2-303.1](#).

146 (8) (a) Except as otherwise provided by law, the state auditor may not withhold funds
147 under Subsection (7)(g) until a state or local taxing or fee-assessing unit has received formal
148 written notice of noncompliance from the auditor and has been given 60 days to make the
149 specified corrections.

150 (b) If, after receiving notice under Subsection (8)(a), a state or independent local
151 fee-assessing unit that exclusively assesses fees has not made corrections to comply with state
152 laws and procedures in the budgeting, expenditures, and financial reporting of public funds, the
153 state auditor:

154 (i) shall provide a recommended timeline for corrective actions; and

155 (ii) may prohibit the state or local fee-assessing unit from accessing money held by the
156 state; and

157 (iii) may prohibit a state or local fee-assessing unit from accessing money held in an
158 account of a financial institution by filing an action in district court requesting an order of the
159 court to prohibit a financial institution from providing the fee-assessing unit access to an
160 account.

161 (c) The state auditor shall remove a limitation on accessing funds under Subsection
162 (8)(b) upon compliance with state laws and procedures in the budgeting, expenditures, and
163 financial reporting of public funds.

164 (d) If a local taxing or fee-assessing unit has not adopted a budget in compliance with
165 state law, the state auditor:

166 (i) shall provide notice to the taxing or fee-assessing unit of the unit's failure to
167 comply;

168 (ii) may prohibit the taxing or fee-assessing unit from accessing money held by the
169 state; and

170 (iii) may prohibit a taxing or fee-assessing unit from accessing money held in an
171 account of a financial institution by:

172 (A) contacting the taxing or fee-assessing unit's financial institution and requesting that
173 the institution prohibit access to the account; or

174 (B) filing an action in district court requesting an order of the court to prohibit a
175 financial institution from providing the taxing or fee-assessing unit access to an account.

176 (e) If the local taxing or fee-assessing unit adopts a budget in compliance with state
177 law, the state auditor shall eliminate a limitation on accessing funds described in Subsection
178 (8)(d).

179 (9) The state auditor may not withhold funds under Subsection (7)(h) until a county has
180 received formal written notice of noncompliance from the auditor and has been given 60 days
181 to make the specified corrections.

182 (10) Notwithstanding Subsection (7)(g), (7)(h), (8)(b), or (8)(d) the state auditor:

183 (a) shall authorize a disbursement by a state or local taxing or fee-assessing unit if the
184 disbursement is necessary to:

185 (i) avoid a major disruption in the operations of the state or local taxing or
186 fee-assessing unit; or

187 (ii) meet debt service obligations; and

188 (b) may authorize a disbursement by a state or local taxing or fee-assessing unit as the
189 state auditor determines is appropriate.

190 (11) The state auditor shall:

191 (a) establish audit guidelines and procedures for audits of local mental health and
192 substance abuse authorities and their contract providers, conducted pursuant to Title 17,
193 Chapter 43, Parts 2, Local Substance Abuse Authorities and 3, Local Mental Health
194 Authorities, Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal
195 Organizations, and Other Local Entities Act, and Title 62A, Chapter 15, Substance Abuse and
196 Mental Health Act; and

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

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

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

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

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

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

214 (13) (a) The state auditor may not audit work that the state auditor performed before
215 becoming state auditor.

216 (b) If the state auditor has previously been a responsible official in state government
217 whose work has not yet been audited, the Legislature shall:

218 (i) designate how that work shall be audited; and

219 (ii) provide additional funding for those audits, if necessary.

220 (14) The state auditor shall:

221 (a) with the assistance, advice, and recommendations of an advisory committee
222 appointed by the state auditor from among local district boards of trustees, officers, and
223 employees and special service district boards, officers, and employees:

224 (i) prepare a Uniform Accounting Manual for Local Districts that:

225 (A) prescribes a uniform system of accounting and uniform budgeting and reporting

226 procedures for local districts under Title 17B, Limited Purpose Local Government Entities -
227 Local Districts, and special service districts under Title 17D, Chapter 1, Special Service
228 District Act;

229 (B) conforms with generally accepted accounting principles; and

230 (C) prescribes reasonable exceptions and modifications for smaller districts to the
231 uniform system of accounting, budgeting, and reporting;

232 (ii) maintain the manual under Subsection (14)(a) so that it continues to reflect
233 generally accepted accounting principles;

234 (iii) conduct a continuing review and modification of procedures in order to improve
235 them;

236 (iv) prepare and supply each district with suitable budget and reporting forms; and

237 (v) prepare instructional materials, conduct training programs, and render other
238 services considered necessary to assist local districts and special service districts in
239 implementing the uniform accounting, budgeting, and reporting procedures; and

240 (b) continually analyze and evaluate the accounting, budgeting, and reporting practices
241 and experiences of specific local districts and special service districts selected by the state
242 auditor and make the information available to all districts.

243 (15) (a) The following records in the custody or control of the state auditor are
244 protected records under Title 63G, Chapter 2, Government Records Access and Management
245 Act:

246 (i) records that would disclose information relating to allegations of personal
247 misconduct, gross mismanagement, or illegal activity of a past or present governmental
248 employee if the information or allegation cannot be corroborated by the state auditor through
249 other documents or evidence, and the records relating to the allegation are not relied upon by
250 the state auditor in preparing a final audit report;

251 (ii) records and audit workpapers to the extent they would disclose the identity of a
252 person who during the course of an audit, communicated the existence of any waste of public
253 funds, property, or manpower, or a violation or suspected violation of a law, rule, or regulation

254 adopted under the laws of this state, a political subdivision of the state, or any recognized entity
255 of the United States, if the information was disclosed on the condition that the identity of the
256 person be protected;

257 (iii) before an audit is completed and the final audit report is released, records or drafts
258 circulated to a person who is not an employee or head of a governmental entity for their
259 response or information;

260 (iv) records that would disclose an outline or part of any audit survey plans or audit
261 program; and

262 (v) requests for audits, if disclosure would risk circumvention of an audit.

263 (b) The provisions of Subsections (15)(a)(i), (ii), and (iii) do not prohibit the disclosure
264 of records or information that relate to a violation of the law by a governmental entity or
265 employee to a government prosecutor or peace officer.

266 (c) The provisions of this Subsection (15) do not limit the authority otherwise given to
267 the state auditor to classify a document as public, private, controlled, or protected under Title
268 63G, Chapter 2, Government Records Access and Management Act.

269 (d) (i) As used in this Subsection (15)(d), "record dispute" means a dispute between the
270 state auditor and the subject of an audit performed by the state auditor as to whether the state
271 auditor may release a record, as defined in Section [63G-2-103](#), to the public that the state
272 auditor gained access to in the course of the state auditor's audit but which the subject of the
273 audit claims is not subject to disclosure under Title 63G, Chapter 2, Government Records
274 Access and Management Act.

275 (ii) The state auditor may submit a record dispute to the State Records Committee,
276 created in Section [63G-2-501](#), for a determination of whether the state auditor may, in
277 conjunction with the state auditor's release of an audit report, release to the public the record
278 that is the subject of the record dispute.

279 (iii) The state auditor or the subject of the audit may seek judicial review of a State
280 Records Committee determination under Subsection (15)(d)(ii), as provided in Section
281 [63G-2-404](#).

282 (16) If the state auditor conducts an audit of an entity that the state auditor has
283 previously audited and finds that the entity has not implemented a recommendation made by
284 the state auditor in a previous audit, the state auditor shall notify the Legislative Management
285 Committee through its audit subcommittee that the entity has not implemented that
286 recommendation.