

**RESOLVING GOVERNMENT RECORD DISPUTES**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Rebecca Chavez-Houck**

Senate Sponsor: Howard A. Stephenson

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

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

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

**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 [~~(d)~~] (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.

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**Legislative Review Note**  
as of 2-13-15 10:58 AM

**Office of Legislative Research and General Counsel**