

PUBLIC SCHOOL MEMBERSHIP IN ASSOCIATIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Francis D. Gibson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts language governing a public school's membership in certain associations.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits a public school from membership in certain associations after July 1, 2017;
- ▶ establishes requirements for the membership of an association governing body;
- ▶ requires an association to provide certain reports to the State Board of Education;
- ▶ requires an association to follow certain budgetary procedures;
- ▶ establishes an appeals panel to hear an appeal of certain decisions by an association;
- ▶ requires an association to comply with:
 - Title 52, Chapter 4, Open and Public Meetings Act;
 - Title 63G, Chapter 2, Government Records Access and Management Act; and
 - Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **52-4-103**, as last amended by Laws of Utah 2016, Chapter 77

32 **63A-3-106**, as last amended by Laws of Utah 2016, Chapter 298

33 **63G-2-103**, as last amended by Laws of Utah 2015, Chapter 265

34 **67-16-3**, as last amended by Laws of Utah 2012, Chapter 202

35 ENACTS:

36 **53A-1-1601**, Utah Code Annotated 1953

37 **53A-1-1602**, Utah Code Annotated 1953

38 **53A-1-1603**, Utah Code Annotated 1953

39 **53A-1-1604**, Utah Code Annotated 1953

40 **53A-1-1605**, Utah Code Annotated 1953

41 **53A-1-1606**, Utah Code Annotated 1953



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

44 Section 1. Section **52-4-103** is amended to read:

45 **52-4-103. Definitions.**

46 As used in this chapter:

47 (1) "Anchor location" means the physical location from which:

48 (a) an electronic meeting originates; or

49 (b) the participants are connected.

50 (2) "Capitol hill complex" means the grounds and buildings within the area bounded by

51 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard in Salt Lake

52 City.

53 (3) "Convening" means the calling together of a public body by a person authorized to

54 do so for the express purpose of discussing or acting upon a subject over which that public

55 body has jurisdiction or advisory power.

56 (4) "Electronic meeting" means a public meeting convened or conducted by means of a

57 conference using electronic communications.

58 (5) "Electronic message" means a communication transmitted electronically, including:

- 59 (a) electronic mail;
60 (b) instant messaging;
61 (c) electronic chat;
62 (d) text messaging as defined in Section 76-4-401; or
63 (e) any other method that conveys a message or facilitates communication
64 electronically.

65 (6) (a) "Meeting" means the convening of a public body or a specified body, with a
66 quorum present, including a workshop or an executive session, whether in person or by means
67 of electronic communications, for the purpose of discussing, receiving comments from the
68 public about, or acting upon a matter over which the public body or specific body has
69 jurisdiction or advisory power.

- 70 (b) "Meeting" does not mean:
71 (i) a chance gathering or social gathering; or
72 (ii) a convening of the State Tax Commission to consider a confidential tax matter in
73 accordance with Section 59-1-405.

74 (c) "Meeting" does not mean the convening of a public body that has both legislative
75 and executive responsibilities if:
76 (i) no public funds are appropriated for expenditure during the time the public body is
77 convened; and
78 (ii) the public body is convened solely for the discussion or implementation of
79 administrative or operational matters:

- 80 (A) for which no formal action by the public body is required; or
81 (B) that would not come before the public body for discussion or action.

82 (7) "Monitor" means to hear or observe, live, by audio or video equipment, all of the
83 public statements of each member of the public body who is participating in a meeting.

84 (8) "Participate" means the ability to communicate with all of the members of a public
85 body, either verbally or electronically, so that each member of the public body can hear or
86 observe the communication.

87 (9) (a) "Public body" means:

- 88 (i) any administrative, advisory, executive, or legislative body of the state or its
89 political subdivisions that:

90 [(i)] (A) is created by the Utah Constitution, statute, rule, ordinance, or resolution;

91 [(ii)] (B) consists of two or more persons;

92 [(iii)] (C) expends, disburses, or is supported in whole or in part by tax revenue; and

93 [(iv)] (D) is vested with the authority to make decisions regarding the public's

94 business[-]; or

95 (ii) any administrative, advisory, executive, or policymaking body of an association, as

96 defined in Section 53A-1-1601, that:

97 (A) consists of two or more persons;

98 (B) expends, disburses, or is supported in whole or in part by dues paid by a public

99 school or whose employees participate in a benefit or program described in Title 49, Utah State

100 Retirement and Insurance Benefit Act; and

101 (C) is vested with authority to make decisions regarding the participation of a public

102 school or student in an interscholastic activity as defined in Section 53A-1-1601.

103 (b) "Public body" includes, as defined in Section 11-13-103, an interlocal entity or joint

104 or cooperative undertaking.

105 (c) "Public body" does not include a:

106 (i) political party, political group, or political caucus;

107 (ii) conference committee, rules committee, or sifting committee of the Legislature; or

108 (iii) school community council or charter trust land council as defined in Section

109 53A-1a-108.1.

110 (10) "Public statement" means a statement made in the ordinary course of business of

111 the public body with the intent that all other members of the public body receive it.

112 (11) (a) "Quorum" means a simple majority of the membership of a public body, unless

113 otherwise defined by applicable law.

114 (b) "Quorum" does not include a meeting of two elected officials by themselves when

115 no action, either formal or informal, is taken on a subject over which these elected officials

116 have advisory power.

117 (12) "Recording" means an audio, or an audio and video, record of the proceedings of a

118 meeting that can be used to review the proceedings of the meeting.

119 (13) "Specified body":

120 (a) means an administrative, advisory, executive, or legislative body that:

- 121 (i) is not a public body;
- 122 (ii) consists of three or more members; and
- 123 (iii) includes at least one member who is:
- 124 (A) a legislator; and
- 125 (B) officially appointed to the body by the president of the Senate, speaker of the
- 126 House of Representatives, or governor; and
- 127 (b) does not include a body listed in Subsection (9)(c)(ii).
- 128 (14) "Transmit" means to send, convey, or communicate an electronic message by
- 129 electronic means.

130 Section 2. Section **53A-1-1601** is enacted to read:

131 **Part 16. Public School Membership in Associations**

132 **53A-1-1601. Definitions.**

133 As used in this part:

134 (1) "Alignment" or "realignment" means the initial or subsequent act, respectively, of
135 assigning a public school a classification or region.

136 (2) "Appeals panel" means the appeals panel created in Section [53A-1-1606](#).

137 (3) "Association" means an organization that governs or regulates a student's
138 participation in an interscholastic activity.

139 (4) "Classification" means the designation of a school based on the size of the school's
140 student enrollment population for purposes of interscholastic activities.

141 (5) "Eligibility" means eligibility to participate in an interscholastic activity regulated
142 or governed by an association.

143 (6) "Governing body" means a body within an association that:

144 (a) is responsible for:

145 (i) adopting rules or policies that govern interscholastic activities or the administration
146 of the association;

147 (ii) adopting or amending the association's governing document or bylaws;

148 (iii) enforcing the rules and policies of the association; and

149 (iv) adopting the association's budget; and

150 (b) has oversight of other boards, committees, councils, or bodies within the
151 association.

152 (7) "Interscholastic activity" means an activity within the state in which a student that
153 participates represents the student's school in the activity.

154 (8) "Public hearing" means a hearing at which members of the public are provided a
155 reasonable opportunity to comment on the subject of the hearing.

156 (9) "Region" means a grouping of schools of the same classification for purposes of
157 interscholastic activities.

158 Section 3. Section **53A-1-1602** is enacted to read:

159 **53A-1-1602. Public schools prohibited from membership.**

160 A public school may not be a member of, pays due to, or otherwise facilitate student
161 participation in interscholastic activities through an association that is not in compliance on or
162 after July 1, 2017, with:

163 (1) this part;

164 (2) Title 52, Chapter 4, Open and Public Meetings Act;

165 (3) Title 63G, Chapter 2, Government Records Access and Management Act; and

166 (4) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

167 Section 4. Section **53A-1-1603** is enacted to read:

168 **53A-1-1603. Governing body membership.**

169 (1) (a) A governing body shall have 15 members as follows:

170 (i) six members who:

171 (A) are each an elected member of a local school board; and

172 (B) each represent a different classification;

173 (ii) (A) one school superintendent representing the two largest classifications;

174 (B) one school superintendent representing the two classifications that are next in

175 diminishing size to the smaller of the two classifications described in Subsection (1)(a)(ii)(A);

176 and

177 (C) one school superintendent representing the two classifications that are next in

178 diminishing size to the smaller of the two classifications described in Subsection (1)(a)(ii)(B);

179 (iii) (A) one school principal representing the two largest classifications;

180 (B) one school principal representing the two classifications that are next in

181 diminishing size to the smaller of the two classifications described in Subsection (1)(a)(iii)(A);

182 and

183 (C) one school principal representing the two classifications that are next in
184 diminishing size to the smaller of the two classifications described in Subsection (1)(a)(iii)(B);

185 (iv) one representative of charter schools;

186 (v) one representative of private schools; and

187 (vi) one member representing the State Board of Education.

188 (b) Only a member respectively described in Subsection (1)(a)(iv) or (v) may be
189 elected or appointed by or represent charter or private schools on the governing body.

190 (2) (a) A member described in Subsection (1)(a)(i), (ii), (iii), or (v) may be elected,
191 appointed, or otherwise selected in accordance with association rule or policy to the extent the
192 selection reflects the membership requirements in Subsection (1)(a)(i), (ii), (iii), or (v).

193 (b) A governing body member described in Subsection (1)(a)(vi) shall be the chair of
194 the State Board of Education or the chair's designee if the designee is an elected member of the
195 State Board of Education.

196 Section 5. Section **53A-1-1604** is enacted to read:

197 **53A-1-1604. Reporting requirements.**

198 An association shall provide a verbal report, accompanied by a written report, annually
199 to the State Board of Education, including:

200 (1) the association's annual budget in accordance with Section [53A-1-1605](#);

201 (2) a schedule of events scheduled or facilitated by the association;

202 (3) procedures for alignment or realignment;

203 (4) any amendments or changes to the association's governing document or bylaws; and

204 (5) any other information requested by the State Board of Education.

205 Section 6. Section **53A-1-1605** is enacted to read:

206 **53A-1-1605. Association budgets.**

207 (1) An association shall:

208 (a) adopt a budget in accordance with this section; and

209 (b) use uniform budgeting, accounting, and auditing procedures and forms, which shall
210 be in accordance with generally accepted accounting principles or auditing standards.

211 (2) An association budget officer or executive director shall annually prepare a
212 tentative budget, with supporting documentation, to be submitted to the governing body.

213 (3) The tentative budget and supporting documents shall include the following items:

- 214 (a) the revenues and expenditures of the preceding fiscal year;
- 215 (b) the estimated revenues and expenditures of the current fiscal year;
- 216 (c) a detailed estimate of the essential expenditures for all purposes for the next
- 217 succeeding fiscal year; and
- 218 (d) the estimated financial condition of the association by funds at the close of the
- 219 current fiscal year.
- 220 (4) The tentative budget shall be filed with the governing body 15 days, or earlier,
- 221 before the date of the tentative budget's proposed adoption by the governing body.
- 222 (5) The governing body shall adopt a budget.
- 223 (6) Before the adoption or amendment of a budget, the governing body shall hold a
- 224 public hearing on the proposed budget or budget amendment.
- 225 (7) (a) In addition to complying with Title 52, Chapter 4, Open and Public Meetings
- 226 Act, in regards to the public hearing described in Subsection (6), at least 10 days before the
- 227 public hearing, a governing body shall:
- 228 (i) publish a notice of the public hearing electronically in accordance with Section
- 229 45-1-101; and
- 230 (ii) post the proposed budget on the association's Internet website.
- 231 (b) A notice of a public hearing on an association's proposed budget shall include
- 232 information on how the public may access the proposed budget as provided in Subsection
- 233 (7)(a).
- 234 (8) No later than September 30 of each year, the governing body shall file a copy of the
- 235 adopted budget with the state auditor and the State Board of Education.
- 236 Section 7. Section **53A-1-1606** is enacted to read:
- 237 **53A-1-1606. Procedures for disputes -- Appeals -- Appeals panel -- Compensation.**
- 238 (1) (a) An association shall establish a uniform procedure for hearing and deciding:
- 239 (i) disputes;
- 240 (ii) questions;
- 241 (iii) allegations of violations of the association's rules or policies;
- 242 (iv) requests to establish eligibility after a student transfers schools; and
- 243 (v) disputes related to alignment or realignment.
- 244 (b) An individual may appeal to an appeals panel established in this section an

245 association decision regarding a request to establish eligibility after a student transfers schools.

246 (2) (a) There is established an appeals panel for an association decision described in
247 Subsection (1)(b).

248 (b) The appeals panel shall consist of the following three members:

249 (i) a judge or attorney who is not employed by, or contracts with, a school;

250 (ii) a retired educator, principal, or superintendent; and

251 (iii) a retired athletic director or coach.

252 (c) A review and decision by the appeals panel is limited to whether the association
253 properly followed the association's rules and procedures in regard to a decision described in
254 Subsection (1)(b).

255 (d) The appeals panel's decision is final.

256 (3) (a) The State Board of Education shall appoint the members of the appeals panel
257 described in Subsection (2):

258 (i) from the association's nominations described in Subsection (3)(b); and

259 (ii) in accordance with the State Board of Education's appointment process.

260 (b) (i) The association shall nominate up to three individuals for each position
261 described in Subsection (2) for the State Board of Education's consideration.

262 (ii) If the State Board of Education refuses to appoint members to the panel who were
263 nominated by the association as described in Subsection (3)(b)(i), the State Board of Education
264 shall request additional nominations from the association.

265 (iii) No later than 45 days after the association provides the nominations, the State
266 Board of Education shall appoint to the appeals panel an individual from the names provided
267 by the association.

268 (c) For the initial membership, the State Board of Education shall appoint two of the
269 positions having an initial term of three years and one position having an initial term of two
270 years.

271 (d) Except as required by Subsection (3)(e), as terms of appeals panel members expire,
272 the State Board of Education shall appoint each new member or reappointed member to a
273 two-year term.

274 (e) When a vacancy occurs in the membership for any reason, the replacement shall be
275 appointed for the unexpired term.

276 (4) (a) The salary for a member of the appeals panel described in this section shall be:

277 (i) the same as the salary for a member of the Legislature as described in Section

278 36-2-3; and

279 (ii) except as provided in Subsection (4)(b), set in accordance with Section 36-2-3 and

280 Subsection 36-2-2(1).

281 (b) For purposes of setting the salary for a member of the appeals panel:

282 (i) a calendar day for the annual general session described in Subsection

283 36-2-3(1)(b)(i)(A) is interpreted as a calendar day of a meeting of the appeals panel; and

284 (ii) unless the Legislative Compensation Commission created in Section 36-2-4 issues

285 a revised report on or after July 1, 2017, the salary for a member of the appeals panel through

286 calendar year 2017 is \$273 per day for each calendar day that a member described in

287 Subsection (2)(b) attends a meeting described in Subsection (4)(b)(i).

288 (c) In addition to a salary, a member of the appeals panel shall receive reimbursement

289 for travel expenses incurred as a member of the appeals panel at the rates established by the

290 Division of Finance under Sections 63A-3-106 and 63A-3-107.

291 Section 8. Section **63A-3-106** is amended to read:

292 **63A-3-106. Per diem rates for board members.**

293 (1) As used in this section and Section 63A-3-107:

294 (a) "Board" means a board, commission, council, committee, task force, or similar
295 body established to perform a governmental function.

296 (b) "Board member" means a person appointed or designated by statute to serve on a
297 board.

298 (c) "Executive branch" means an agency within the executive branch of state
299 government.

300 (d) (i) "Governmental entity" has the same meaning, except as provided in Subsection
301 (1)(d)(ii), as provided under Section 63G-2-103.

302 (ii) "Governmental entity" does not include an association as defined in Section
303 53A-16-101.

304 (e) "Higher education" means a state institution of higher education, as defined under
305 Section 53B-1-102.

306 (f) "Officer" means a person who is elected or appointed to an office or position within

307 a governmental entity.

308 (g) "Official meeting" means a meeting of a board that is called in accordance with
309 statute.

310 (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
311 subject to approval by the executive director, the director of the Division of Finance shall make
312 rules establishing per diem rates to defray subsistence costs for a board member's attendance at
313 an official meeting.

314 (3) Unless otherwise provided by statute, a per diem rate established under Subsection
315 (2) is applicable to a board member who serves:

316 (a) within the executive branch, except as provided under Subsection (3)(b);

317 (b) within higher education, unless higher education pays the costs of the per diem;

318 (c) on a board that is:

319 (i) not included under Subsection (3)(a) or (b); and

320 (ii) created by a statute that adopts the per diem rates by reference to:

321 (A) this section; and

322 (B) the rule authorized by this section; and

323 (d) within a government entity that is not included under Subsection (3)(a), if the
324 government entity adopts the per diem rates by reference to:

325 (i) this section; or

326 (ii) the rule establishing the per diem rates.

327 (4) (a) Unless otherwise provided by statute, a board member who is not a legislator
328 may receive per diem under this section and travel expenses under Section [63A-3-107](#) if the per
329 diem and travel expenses are incurred by the board member for attendance at an official
330 meeting.

331 (b) Notwithstanding Subsection (4)(a), a board member may not receive per diem or
332 travel expenses under this Subsection (4) if the board member is being paid by a governmental
333 entity while performing the board member's service on the board.

334 (5) A board member may decline to receive per diem for the board member's service.

335 (6) Compensation and expenses of a board member who is a legislator are governed by
336 Section [36-2-2](#) and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

337 Section 9. Section **63G-2-103** is amended to read:

338 **63G-2-103. Definitions.**

339 As used in this chapter:

340 (1) "Audit" means:

341 (a) a systematic examination of financial, management, program, and related records
342 for the purpose of determining the fair presentation of financial statements, adequacy of
343 internal controls, or compliance with laws and regulations; or344 (b) a systematic examination of program procedures and operations for the purpose of
345 determining their effectiveness, economy, efficiency, and compliance with statutes and
346 regulations.347 (2) "Chronological logs" mean the regular and customary summary records of law
348 enforcement agencies and other public safety agencies that show:349 (a) the time and general nature of police, fire, and paramedic calls made to the agency;
350 and

351 (b) any arrests or jail bookings made by the agency.

352 (3) "Classification," "classify," and their derivative forms mean determining whether a
353 record series, record, or information within a record is public, private, controlled, protected, or
354 exempt from disclosure under Subsection [63G-2-201\(3\)\(b\)](#).

355 (4) (a) "Computer program" means:

356 (i) a series of instructions or statements that permit the functioning of a computer
357 system in a manner designed to provide storage, retrieval, and manipulation of data from the
358 computer system; and359 (ii) any associated documentation and source material that explain how to operate the
360 computer program.

361 (b) "Computer program" does not mean:

362 (i) the original data, including numbers, text, voice, graphics, and images;

363 (ii) analysis, compilation, and other manipulated forms of the original data produced by
364 use of the program; or365 (iii) the mathematical or statistical formulas, excluding the underlying mathematical
366 algorithms contained in the program, that would be used if the manipulated forms of the
367 original data were to be produced manually.

368 (5) (a) "Contractor" means:

- 369 (i) any person who contracts with a governmental entity to provide goods or services
370 directly to a governmental entity; or
- 371 (ii) any private, nonprofit organization that receives funds from a governmental entity.
- 372 (b) "Contractor" does not mean a private provider.
- 373 (6) "Controlled record" means a record containing data on individuals that is controlled
374 as provided by Section [63G-2-304](#).
- 375 (7) "Designation," "designate," and their derivative forms mean indicating, based on a
376 governmental entity's familiarity with a record series or based on a governmental entity's
377 review of a reasonable sample of a record series, the primary classification that a majority of
378 records in a record series would be given if classified and the classification that other records
379 typically present in the record series would be given if classified.
- 380 (8) "Elected official" means each person elected to a state office, county office,
381 municipal office, school board or school district office, local district office, or special service
382 district office, but does not include judges.
- 383 (9) "Explosive" means a chemical compound, device, or mixture:
- 384 (a) commonly used or intended for the purpose of producing an explosion; and
- 385 (b) that contains oxidizing or combustive units or other ingredients in proportions,
386 quantities, or packing so that:
- 387 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the
388 compound or mixture may cause a sudden generation of highly heated gases; and
- 389 (ii) the resultant gaseous pressures are capable of:
- 390 (A) producing destructive effects on contiguous objects; or
- 391 (B) causing death or serious bodily injury.
- 392 (10) "Government audit agency" means any governmental entity that conducts an audit.
- 393 (11) (a) "Governmental entity" means:
- 394 (i) executive department agencies of the state, the offices of the governor, lieutenant
395 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,
396 the Board of Examiners, the National Guard, the Career Service Review Office, the State
397 Board of Education, the State Board of Regents, and the State Archives;
- 398 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal
399 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative

400 committees, except any political party, group, caucus, or rules or sifting committee of the
401 Legislature;

402 (iii) courts, the Judicial Council, the Office of the Court Administrator, and similar
403 administrative units in the judicial branch;

404 (iv) any state-funded institution of higher education or public education; or

405 (v) any political subdivision of the state, but, if a political subdivision has adopted an
406 ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this
407 chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or
408 as specified in any other section of this chapter that specifically refers to political subdivisions.

409 (b) "Governmental entity" also means:

410 (i) every office, agency, board, bureau, committee, department, advisory board, or
411 commission of an entity listed in Subsection (11)(a) that is funded or established by the
412 government to carry out the public's business; [~~and~~]

413 (ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative
414 undertaking[-]; and

415 (iii) an association as defined in Section 53A-1-1601.

416 (c) "Governmental entity" does not include the Utah Educational Savings Plan created
417 in Section 53B-8a-103.

418 (12) "Gross compensation" means every form of remuneration payable for a given
419 period to an individual for services provided including salaries, commissions, vacation pay,
420 severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any
421 similar benefit received from the individual's employer.

422 (13) "Individual" means a human being.

423 (14) (a) "Initial contact report" means an initial written or recorded report, however
424 titled, prepared by peace officers engaged in public patrol or response duties describing official
425 actions initially taken in response to either a public complaint about or the discovery of an
426 apparent violation of law, which report may describe:

427 (i) the date, time, location, and nature of the complaint, the incident, or offense;

428 (ii) names of victims;

429 (iii) the nature or general scope of the agency's initial actions taken in response to the
430 incident;

431 (iv) the general nature of any injuries or estimate of damages sustained in the incident;

432 (v) the name, address, and other identifying information about any person arrested or

433 charged in connection with the incident; or

434 (vi) the identity of the public safety personnel, except undercover personnel, or

435 prosecuting attorney involved in responding to the initial incident.

436 (b) Initial contact reports do not include follow-up or investigative reports prepared

437 after the initial contact report. However, if the information specified in Subsection (14)(a)

438 appears in follow-up or investigative reports, it may only be treated confidentially if it is

439 private, controlled, protected, or exempt from disclosure under Subsection [63G-2-201](#)(3)(b).

440 (15) "Legislative body" means the Legislature.

441 (16) "Notice of compliance" means a statement confirming that a governmental entity

442 has complied with a records committee order.

443 (17) "Person" means:

444 (a) an individual;

445 (b) a nonprofit or profit corporation;

446 (c) a partnership;

447 (d) a sole proprietorship;

448 (e) other type of business organization; or

449 (f) any combination acting in concert with one another.

450 (18) "Private provider" means any person who contracts with a governmental entity to

451 provide services directly to the public.

452 (19) "Private record" means a record containing data on individuals that is private as

453 provided by Section [63G-2-302](#).

454 (20) "Protected record" means a record that is classified protected as provided by

455 Section [63G-2-305](#).

456 (21) "Public record" means a record that is not private, controlled, or protected and that

457 is not exempt from disclosure as provided in Subsection [63G-2-201](#)(3)(b).

458 (22) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film,

459 card, tape, recording, electronic data, or other documentary material regardless of physical form

460 or characteristics:

461 (i) that is prepared, owned, received, or retained by a governmental entity or political

462 subdivision; and

463 (ii) where all of the information in the original is reproducible by photocopy or other
464 mechanical or electronic means.

465 (b) "Record" does not mean:

466 (i) a personal note or personal communication prepared or received by an employee or
467 officer of a governmental entity:

468 (A) in a capacity other than the employee's or officer's governmental capacity; or

469 (B) that is unrelated to the conduct of the public's business;

470 (ii) a temporary draft or similar material prepared for the originator's personal use or
471 prepared by the originator for the personal use of an individual for whom the originator is
472 working;

473 (iii) material that is legally owned by an individual in the individual's private capacity;

474 (iv) material to which access is limited by the laws of copyright or patent unless the
475 copyright or patent is owned by a governmental entity or political subdivision;

476 (v) proprietary software;

477 (vi) junk mail or a commercial publication received by a governmental entity or an
478 official or employee of a governmental entity;

479 (vii) a book that is cataloged, indexed, or inventoried and contained in the collections
480 of a library open to the public;

481 (viii) material that is cataloged, indexed, or inventoried and contained in the collections
482 of a library open to the public, regardless of physical form or characteristics of the material;

483 (ix) a daily calendar or other personal note prepared by the originator for the
484 originator's personal use or for the personal use of an individual for whom the originator is
485 working;

486 (x) a computer program that is developed or purchased by or for any governmental
487 entity for its own use;

488 (xi) a note or internal memorandum prepared as part of the deliberative process by:

489 (A) a member of the judiciary;

490 (B) an administrative law judge;

491 (C) a member of the Board of Pardons and Parole; or

492 (D) a member of any other body, other than an association or appeals panel as defined

493 in Section [53A-1-1601](#), charged by law with performing a quasi-judicial function;

494 (xii) a telephone number or similar code used to access a mobile communication
495 device that is used by an employee or officer of a governmental entity, provided that the
496 employee or officer of the governmental entity has designated at least one business telephone
497 number that is a public record as provided in Section [63G-2-301](#);

498 (xiii) information provided by the Public Employees' Benefit and Insurance Program,
499 created in Section [49-20-103](#), to a county to enable the county to calculate the amount to be
500 paid to a health care provider under Subsection [17-50-319\(2\)\(e\)\(ii\)](#);

501 (xiv) information that an owner of unimproved property provides to a local entity as
502 provided in Section [11-42-205](#); or

503 (xv) a video or audio recording of an interview, or a transcript of the video or audio
504 recording, that is conducted at a Children's Justice Center established under Section [67-5b-102](#).

505 (23) "Record series" means a group of records that may be treated as a unit for
506 purposes of designation, description, management, or disposition.

507 (24) "Records committee" means the State Records Committee created in Section
508 [63G-2-501](#).

509 (25) "Records officer" means the individual appointed by the chief administrative
510 officer of each governmental entity, or the political subdivision to work with state archives in
511 the care, maintenance, scheduling, designation, classification, disposal, and preservation of
512 records.

513 (26) "Schedule," "scheduling," and their derivative forms mean the process of
514 specifying the length of time each record series should be retained by a governmental entity for
515 administrative, legal, fiscal, or historical purposes and when each record series should be
516 transferred to the state archives or destroyed.

517 (27) "Sponsored research" means research, training, and other sponsored activities as
518 defined by the federal Executive Office of the President, Office of Management and Budget:

519 (a) conducted:

520 (i) by an institution within the state system of higher education defined in Section
521 [53B-1-102](#); and

522 (ii) through an office responsible for sponsored projects or programs; and

523 (b) funded or otherwise supported by an external:

524 (i) person that is not created or controlled by the institution within the state system of
525 higher education; or

526 (ii) federal, state, or local governmental entity.

527 (28) "State archives" means the Division of Archives and Records Service created in
528 Section [63A-12-101](#).

529 (29) "State archivist" means the director of the state archives.

530 (30) "Summary data" means statistical records and compilations that contain data
531 derived from private, controlled, or protected information but that do not disclose private,
532 controlled, or protected information.

533 Section 10. Section **67-16-3** is amended to read:

534 **67-16-3. Definitions.**

535 As used in this chapter:

536 (1) "Agency" means:

537 (a) any department, division, agency, commission, board, council, committee,
538 authority, or any other institution of the state or any of its political subdivisions[-]; or

539 (b) an association as defined in Section [53A-16-101](#).

540 (2) "Agency head" means the chief executive or administrative officer of any agency.

541 (3) "Assist" means to act, or offer or agree to act, in such a way as to help, represent,
542 aid, advise, furnish information to, or otherwise provide assistance to a person or business
543 entity, believing that such action is of help, aid, advice, or assistance to such person or business
544 entity and with the intent to assist such person or business entity.

545 (4) "Business entity" means a sole proprietorship, partnership, association, joint
546 venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on
547 a business.

548 (5) "Compensation" means anything of economic value, however designated, which is
549 paid, loaned, granted, given, donated, or transferred to any person or business entity by anyone
550 other than the governmental employer for or in consideration of personal services, materials,
551 property, or any other thing whatsoever.

552 (6) "Controlled, private, or protected information" means information classified as
553 controlled, private, or protected in Title 63G, Chapter 2, Government Records Access and
554 Management Act, or other applicable provision of law.

- 555 (7) "Governmental action" means any action on the part of the state, a political
556 subdivision, or an agency, including:
- 557 (a) any decision, determination, finding, ruling, or order; and
558 (b) any grant, payment, award, license, contract, subcontract, transaction, decision,
559 sanction, or approval, or the denial thereof, or the failure to act in respect to.
- 560 (8) "Improper disclosure" means disclosure of controlled, private, or protected
561 information to any person who does not have the right to receive the information.
- 562 (9) "Legislative employee" means any officer or employee of the Legislature, or any
563 committee of the Legislature, who is appointed or employed to serve, either with or without
564 compensation, for an aggregate of less than 800 hours during any period of 365 days.
565 "Legislative employee" does not include legislators.
- 566 (10) "Legislator" means a member or member-elect of either house of the Legislature
567 of the state of Utah.
- 568 (11) "Political subdivision" means a district, school district, or any other political
569 subdivision of the state that is not an agency, but does not include a municipality or a county.
- 570 (12) (a) "Public employee" means a person who is not a public officer who is employed
571 on a full-time, part-time, or contract basis by:
- 572 (i) the state [or any of its political subdivisions];
573 (ii) a subdivision of the state; or
574 (iii) an association as defined in Section [53A-1-1601](#).
- 575 (b) "Public employee" does not include legislators or legislative employees.
- 576 (13) (a) "Public officer" means ~~[all]~~ an elected or appointed ~~[officers of the state or any~~
577 ~~of its political subdivisions who occupy policymaking posts.]~~ officer:
- 578 (i) (A) of the state;
579 (B) of a political subdivision of the state; or
580 (C) an association as defined in Section [53A-1-1601](#); and
581 (ii) who occupies a policymaking post.
- 582 (b) "Public officer" does not include legislators or legislative employees.
- 583 (14) "State" means the state of Utah.
- 584 (15) "Substantial interest" means the ownership, either legally or equitably, by an
585 individual, the individual's spouse, or the individual's minor children, of at least 10% of the

586 outstanding capital stock of a corporation or a 10% interest in any other business entity.

Legislative Review Note
Office of Legislative Research and General Counsel