

PRIVACY PROTECTION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Francis D. Gibson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill creates the position of data privacy officer and the Personal Privacy Oversight Committee in the Office of the State Auditor.

Highlighted Provisions:

This bill:

- ▶ authorizes the state auditor to appoint and oversee a data privacy officer and the members of the Personal Privacy Oversight Committee;
 - ▶ authorizes the state auditor to require government entities to halt the use of certain technologies or privacy policies, subject to legislative override;
 - ▶ authorizes the data privacy officer, with the assistance of the Personal Privacy Oversight Committee, to review the data privacy practices of government entities;
- and
- ▶ creates a reporting requirement for the data privacy officer.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

67-3-1, as last amended by Laws of Utah 2018, Chapters 200 and 256



28 ENACTS:

29 **67-3-12**, Utah Code Annotated 1953

30 **67-3-13**, Utah Code Annotated 1953

31

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

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

34 **67-3-1. Functions and duties.**

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

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

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

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

42 (b) the revenues received or accrued;

43 (c) expenditures paid or accrued;

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

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

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

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

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

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

55 (A) honesty and integrity in fiscal affairs;

56 (B) accuracy and reliability of financial statements;

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

58 (D) compliance with the law.

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

61 (c) (i) The costs of the federal compliance portion of the audit may be paid from an
62 appropriation to the state auditor from the General Fund.

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

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

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

74 (i) the honesty and integrity of all [~~its~~] the entity's fiscal affairs;

75 (ii) whether [~~or not its~~] the entity's administrators have faithfully complied with
76 legislative intent;

77 (iii) whether [~~or not its~~] the entity's operations have been conducted in an efficient,
78 effective, and cost-efficient manner;

79 (iv) whether [~~or not its~~] the entity's programs have been effective in accomplishing the
80 intended objectives; and

81 (v) whether [~~or not its~~] the entity's management, control, and information systems are
82 adequate, effective, and secure.

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

85 (i) has an elected auditor; and

86 (ii) has, within the entity's last budget year, had [~~its~~] the entity's financial statements or
87 performance formally reviewed by another outside auditor.

88 (5) The state auditor:

89 (a) shall administer any oath or affirmation necessary to the performance of the duties

90 of the auditor's office[;] and

91 (b) may:

92 (i) subpoena witnesses and documents, whether electronic or otherwise[;] and

93 (ii) examine into any matter that the auditor considers necessary.

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

97 (7) The state auditor shall:

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

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

102 (ii) all debtors of the state;

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

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

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

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

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

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

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

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

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

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

122 (h) subject to Subsection (9), withhold the disbursement of tax money from any county,
123 if necessary, to ensure that officials and employees in the county comply with Section
124 [59-2-303.1](#); and

125 (i) withhold state allocated funds or the disbursement of property taxes from a local
126 government entity or a limited purpose entity, as those terms are defined in Section [67-1a-15](#) if
127 the state auditor finds the withholding necessary to ensure that the entity registers and
128 maintains the entity's registration with the lieutenant governor, in accordance with Section
129 [67-1a-15](#).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

166 (10) (a) The state auditor may not withhold funds under Subsection (7)(i) until the state
167 auditor receives a notice of non-registration, as that term is defined in Section 67-1a-15.

168 (b) If the state auditor receives a notice of non-registration, the state auditor may
169 prohibit the local government entity or limited purpose entity, as those terms are defined in
170 Section 67-1a-15, from accessing:

171 (i) money held by the state; and

172 (ii) money held in an account of a financial institution by:

173 (A) contacting the entity's financial institution and requesting that the institution
174 prohibit access to the account; or

175 (B) filing an action in district court requesting an order of the court to prohibit a
176 financial institution from providing the entity access to an account.

177 (c) The state auditor shall remove the prohibition on accessing funds described in
178 Subsection (10)(b) if the state auditor received a notice of registration, as that term is defined in
179 Section 67-1a-15, from the lieutenant governor.

180 (11) Notwithstanding Subsection (7)(g), (7)(h), (7)(i), (8)(b), (8)(d), or (10)(b), the
181 state auditor:

182 (a) shall authorize a disbursement by a local government entity or limited purpose

183 entity, as those terms are defined in Section 67-1a-15, or a state or local taxing or fee-assessing
184 unit if the disbursement is necessary to:

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

187 (ii) meet debt service obligations; and

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

190 (12) (a) The state auditor may seek relief under the Utah Rules of Civil Procedure to
191 take temporary custody of public funds if an action is necessary to protect public funds from
192 being improperly diverted from their intended public purpose.

193 (b) If the state auditor seeks relief under Subsection (12)(a):

194 (i) the state auditor is not required to exhaust the procedures in Subsection (7) or (8);
195 and

196 (ii) the state treasurer may hold the public funds in accordance with Section 67-4-1 if a
197 court orders the public funds to be protected from improper diversion from their public
198 purpose.

199 (13) The state auditor shall:

200 (a) establish audit guidelines and procedures for audits of local mental health and
201 substance abuse authorities and their contract providers, conducted pursuant to Title 17,
202 Chapter 43, Part 2, Local Substance Abuse Authorities, Title 17, Chapter 43, Part 3, Local
203 Mental Health Authorities, Title 51, Chapter 2a, Accounting Reports from Political
204 Subdivisions, Interlocal Organizations, and Other Local Entities Act, and Title 62A, Chapter
205 15, Substance Abuse and Mental Health Act; and

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

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

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

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

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

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

223 (15) (a) The state auditor may not audit work that the state auditor performed before
224 becoming state auditor.

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

- 227 (i) designate how that work shall be audited; and
- 228 (ii) provide additional funding for those audits, if necessary.

229 (16) The state auditor shall:

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

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

234 (A) prescribes a uniform system of accounting and uniform budgeting and reporting
235 procedures for local districts under Title 17B, Limited Purpose Local Government Entities -
236 Local Districts, and special service districts under Title 17D, Chapter 1, Special Service
237 District Act;

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

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

241 (ii) maintain the manual under this Subsection (16)(a) so that [it] the manual continues
242 to reflect generally accepted accounting principles;

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

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

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

249 (B) ensure that any training described in Subsection (16)(a)(v)(A) complies with Title
250 63G, Chapter 22, State Training and Certification Requirements; and

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

254 (17) (a) The following records in the custody or control of the state auditor are
255 protected records under Title 63G, Chapter 2, Government Records Access and Management
256 Act:

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

262 (ii) records and audit workpapers to the extent [~~they~~] the workpapers would disclose
263 the identity of [~~a person~~] an individual who during the course of an audit, communicated the
264 existence of any waste of public funds, property, or manpower, or a violation or suspected
265 violation of a law, rule, or regulation adopted under the laws of this state, a political
266 subdivision of the state, or any recognized entity of the United States, if the information was
267 disclosed on the condition that the identity of the [~~person~~] individual be protected;

268 (iii) before an audit is completed and the final audit report is released, records or drafts
269 circulated to [~~a person~~] an individual who is not an employee or head of a governmental entity
270 for [~~their~~] the individual's response or information;

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

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

274 (b) The provisions of Subsections (17)(a)(i), (ii), and (iii) do not prohibit the disclosure
275 of records or information that relate to a violation of the law by a governmental entity or

276 employee to a government prosecutor or peace officer.

277 (c) The provisions of this Subsection (17) do not limit the authority otherwise given to
278 the state auditor to classify a document as public, private, controlled, or protected under Title
279 63G, Chapter 2, Government Records Access and Management Act.

280 (d) (i) As used in this Subsection (17)(d), "record dispute" means a dispute between the
281 state auditor and the subject of an audit performed by the state auditor as to whether the state
282 auditor may release a record, as defined in Section 63G-2-103, to the public that the state
283 auditor gained access to in the course of the state auditor's audit but which the subject of the
284 audit claims is not subject to disclosure under Title 63G, Chapter 2, Government Records
285 Access and Management Act.

286 (ii) The state auditor may submit a record dispute to the State Records Committee,
287 created in Section 63G-2-501, for a determination of whether the state auditor may, in
288 conjunction with the state auditor's release of an audit report, release to the public the record
289 that is the subject of the record dispute.

290 (iii) The state auditor or the subject of the audit may seek judicial review of a State
291 Records Committee determination under Subsection (17)(d)(ii), as provided in Section
292 63G-2-404.

293 (18) If the state auditor conducts an audit of an entity that the state auditor has
294 previously audited and finds that the entity has not implemented a recommendation made by
295 the state auditor in a previous audit, the state auditor shall notify the Legislative Management
296 Committee through [its] the Legislative Management Committee's audit subcommittee that the
297 entity has not implemented that recommendation.

298 (19) The state auditor shall:

299 (a) with the advice and consent of the Senate, appoint the state privacy officer
300 described in Section 67-3-12;

301 (b) appoint the members of the Personal Privacy Oversight Committee described in
302 Section 67-3-13;

303 (c) publish the reviews and recommendations made by the state privacy officer and the
304 Personal Privacy Oversight Committee; and

305 (d) determine, upon notification from the Personal Privacy Oversight Committee that a
306 government entity is using a technology or privacy policy that fails to meet minimum

307 acceptable standards, whether to require the government entity using the technology or policy
308 to:

309 (i) if the government entity is a state entity, terminate the use of that technology or
310 policy on or before June 1 of the year following the notification unless the Legislature
311 authorizes the continued use of that technology or policy in statute; or

312 (ii) if the government entity is a local government entity, terminate the use of that
313 technology or policy within 90 days after the day on which the committee conducts the review
314 unless the local government authorizes the continued use of that technology or policy.

315 Section 2. Section **67-3-12** is enacted to read:

316 **67-3-12. State privacy officer.**

317 The state privacy officer shall:

318 (1) based on recommendations from the Personal Privacy Oversight Committee created
319 in Section [67-3-13](#), develop guiding standards for best practices with respect to government
320 privacy policy, technology uses, and data security;

321 (2) based on recommendations from the Personal Privacy Oversight Committee,
322 develop minimum acceptable standards for government privacy policies and technology uses;

323 (3) compile information about government privacy policy, technology uses, and data
324 security;

325 (4) make public and maintain information about government privacy policy,
326 technology uses, and data security on the state auditor's website;

327 (5) provide government entities with educational and training materials developed with
328 the input of the Personal Privacy Oversight Committee that include the following information:

329 (a) the privacy implications and civil liberties concerns of the government use of
330 certain technologies;

331 (b) best practices for government collection and retention policies regarding personally
332 identifiable information;

333 (c) best practices for government data security standards; and

334 (d) the purpose and the process of the state privacy officer and the Personal Privacy
335 Oversight Committee;

336 (6) implement a process to analyze and respond to requests from individuals for the
337 state privacy officer to review a government entity's use of technology that implicates the

338 privacy of individuals' data;

339 (7) identify annually which government entity's technology use or data security policy
340 poses the greatest risk to individual privacy and prioritize those technology uses or security
341 policies for review;

342 (8) review each year, in as timely a manner as possible and with the assistance of the
343 Personal Privacy Oversight Committee, the technology uses and privacy policies that the
344 privacy officer identifies under Subsection (6) or (7) as posing the greatest risk to individuals'
345 privacy;

346 (9) when reviewing a government entity's use of technology or privacy policy under
347 Subsection (8), include in the review:

348 (a) details about the technology or the policy and the technology's or the policy's
349 application;

350 (b) information about the type of data being used;

351 (c) information about how the data is obtained, stored, kept secure, and disposed;

352 (d) information about with whom the government entity shares the information;

353 (e) information about whether an individual can or should be able to opt out of the
354 retention and sharing of the individual's data;

355 (f) information about how the government entity de-identifies or anonymizes data;

356 (g) a determination about the existence of alternative technology or improved practices
357 to protect privacy; and

358 (h) a finding of whether the current government entity's use of technology or policy
359 adequately protects individual privacy;

360 (10) after completing a review described in Subsection (9), determine:

361 (a) each entity's use of personally identifying information, including the entity's
362 practices regarding data:

363 (i) retention;

364 (ii) storage;

365 (iii) protection; and

366 (iv) sharing;

367 (b) the adequacy of the entity's practices in each of the areas described in Subsection
368 (10)(a); and

369 (c) for each of the areas described in Subsection (10)(a) that require reform, provide
370 recommendations to the government entity for reform; and

371 (11) annually report, on or before October 1, to the Judiciary Interim Committee:

372 (a) the results of the reviews described in Subsection (8), if any reviews have been
373 completed;

374 (b) the information described in Subsection (10); and

375 (c) recommendations for legislation based on the guiding standards and minimum
376 standards described in Subsections (1) and (2).

377 Section 3. Section **67-3-13** is enacted to read:

378 **67-3-13. Personal Privacy Oversight Committee.**

379 (1) There is created within the Office of the State Auditor the Personal Privacy
380 Oversight Committee.

381 (2) The committee shall be composed of the following members appointed by the state
382 auditor:

383 (a) two members with experience in internet technology services;

384 (b) two members with experience in cybersecurity;

385 (c) two members representing private industry in technology;

386 (d) two members representing law enforcement;

387 (e) two members with experience in data privacy law;

388 (f) one member with experience in data privacy policy; and

389 (g) two members with experience in civil liberties law or policy and with specific
390 experience in identifying whether the use of a technology or policy may result in disparate
391 impacts on different populations.

392 (3) (a) Except as provided in Subsection (3)(b), the auditor shall appoint a member for
393 a term of four years.

394 (b) The state auditor shall, at the time of appointment or reappointment, adjust the
395 lengths of the terms to ensure that the terms of committee members are staggered so that
396 approximately half of the committee is appointed every two years.

397 (c) When the term of a current committee member expires, the state auditor shall
398 reappoint the member or appoint a new member in accordance with this Subsection (3).

399 (4) (a) When a vacancy occurs in the membership for any reason, the state auditor shall

400 appoint a replacement in accordance with Subsection (3) for the unexpired term.

401 (b) A member whose term has expired may continue to serve until a replacement is
402 appointed.

403 (5) (a) The state privacy officer shall serve as chair of the committee.

404 (b) The committee shall select officers from the committee's members as the
405 committee finds necessary.

406 (6) A majority of the members of the committee is a quorum.

407 (7) The committee shall meet as required by the state privacy officer to accomplish the
408 duties described in Subsection (8).

409 (8) (a) At the request of the state privacy officer, the committee shall review the
410 proposed and current uses of technology described in Subsection [67-3-12](#)(8).

411 (b) The committee shall notify the state auditor if the committee finds that a
412 government entity's use of technology or privacy policy does not comply with the minimum
413 acceptable standards of privacy protection described in Subsection [67-3-12](#)(2).

414 (c) If the committee finds that a use of technology or a policy reviewed under
415 Subsection (8)(a) does meet the minimum acceptable standards of privacy protection, the
416 committee shall review the technology use or policy again two years following the date of the
417 initial review to determine if the use still meets acceptable privacy standards.