

Representative Francis D. Gibson proposes the following substitute bill:

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:



27 **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



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 audit
60 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, examinations,
84 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 of
90 the auditor's office[~~;~~]; and

91 **(b)** may:

92 **(i)** subpoena witnesses and documents, whether electronic or otherwise^[5]; 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 and

101 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; or

112 **(iii)** fails to correct any delinquencies, improper procedures, and errors brought to the

113 official's or employee's attention;

114 **(e)** establish accounting systems, methods, and forms for public accounts in all taxing or

115 fee-assessing units of the state in the interest of uniformity, efficiency, and economy;

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

117 **(g)** subject to Subsection (8)(a), withhold state allocated funds or the disbursement of

118 property taxes from a state or local taxing or fee-assessing unit, if necessary, to ensure that

119 officials and employees in those taxing units comply with state laws and procedures in the

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

121 **(h)** subject to Subsection (9), withhold the disbursement of tax money from any county, if

122 necessary, to ensure that officials and employees in the county comply with Section [59-2-303.1](#);

123 and

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

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

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

136 (i) shall provide a recommended timeline for corrective actions; [~~and~~]

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

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

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

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

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

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

150 and

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

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

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

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

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

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

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

167 (i) money held by the state; and

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

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

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

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

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

178 (a) shall authorize a disbursement by a local government entity or limited purpose entity,
179 as those terms are defined in Section 67-1a-15, or a state or local taxing or fee-assessing unit if
180 the disbursement is necessary to:

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

183 (ii) meet debt service obligations; and

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

186 (12) (a) The state auditor may seek relief under the Utah Rules of Civil Procedure to

187 take temporary custody of public funds if an action is necessary to protect public funds from
188 being improperly diverted from their intended public purpose.

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

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

191 and

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

194 (13) The state auditor shall:

195 (a) establish audit guidelines and procedures for audits of local mental health and
196 substance abuse authorities and their contract providers, conducted pursuant to Title 17, Chapter
197 43, Part 2, Local Substance Abuse Authorities, Title 17, Chapter 43, Part 3, Local Mental Health
198 Authorities, Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal
199 Organizations, and Other Local Entities Act, and Title 62A, Chapter 15, Substance Abuse and
200 Mental Health Act; and

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

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

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

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

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

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

218 (15) (a) The state auditor may not audit work that the state auditor performed before

219 becoming state auditor.

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

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

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

224 (16) The state auditor shall:

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

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

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

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

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

236 (ii) maintain the manual under this Subsection (16)(a) so that [†] the manual continues to
237 reflect generally accepted accounting principles;

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

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

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

244 (B) ensure that any training described in Subsection (16)(a)(v)(A) complies with Title
245 63G, Chapter 22, State Training and Certification Requirements; and

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

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

251 Act:

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

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

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

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

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

269 (b) The provisions of Subsections (17)(a)(i), (ii), and (iii) do not prohibit the disclosure
270 of records or information that relate to a violation of the law by a governmental entity or
271 employee to a government prosecutor or peace officer.

272 (c) The provisions of this Subsection (17) do not limit the authority otherwise given to
273 the state auditor to classify a document as public, private, controlled, or protected under Title
274 63G, Chapter 2, Government Records Access and Management Act.

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

281 (ii) The state auditor may submit a record dispute to the State Records Committee,
282 created in Section 63G-2-501, for a determination of whether the state auditor may, in

283 conjunction with the state auditor's release of an audit report, release to the public the record that
284 is the subject of the record dispute.

285 (iii) The state auditor or the subject of the audit may seek judicial review of a State
286 Records Committee determination under Subsection (17)(d)(ii), as provided in Section
287 [63G-2-404](#).

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

293 (19) The state auditor shall:

294 (a) with the advice and consent of the Senate, appoint the state privacy officer described
295 in Section [67-3-12](#);

296 (b) appoint the members of the Personal Privacy Oversight Committee described in
297 Section [67-3-13](#);

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

300 (d) determine, upon notification from the Personal Privacy Oversight Committee that a
301 government entity is using a technology or privacy policy that fails to meet minimum acceptable
302 standards, whether to require the government entity using the technology or policy to:

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

306 (ii) if the government entity is a local government entity, terminate the use of that
307 technology or policy within 180 days after the day on which the local government entity receives
308 notice of the determination unless the local government authorizes the continued use of that
309 technology or policy.

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

311 **67-3-12. State privacy officer.**

312 The state privacy officer shall:

313 (1) based on recommendations from the Personal Privacy Oversight Committee created
314 in Section [67-3-13](#), develop guiding standards for best practices with respect to government

315 privacy policy, technology uses related to personal privacy, and data security;

316 (2) based on recommendations from the Personal Privacy Oversight Committee, develop
317 minimum acceptable standards for government privacy policies and technology uses related to
318 personal privacy;

319 (3) compile information about government privacy policy, technology uses related to
320 personal privacy, and data security;

321 (4) make public and maintain information about government privacy policy, technology
322 uses related to personal privacy, and data security on the state auditor's website;

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

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

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

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

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

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

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

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

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

343 (a) details about the technology or the policy and the technology's or the policy's
344 application;

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

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

347 (d) information about with whom the government entity shares the information;
348 (e) information about whether an individual can or should be able to opt out of the
349 retention and sharing of the individual's data;
350 (f) information about how the government entity de-identifies or anonymizes data;
351 (g) a determination about the existence of alternative technology or improved practices
352 to protect privacy; and
353 (h) a finding of whether the current government entity's use of technology or policy
354 adequately protects individual privacy;
355 (10) after completing a review described in Subsection (9), determine:
356 (a) each entity's use of personally identifying information, including the entity's practices
357 regarding data:
358 (i) retention;
359 (ii) storage;
360 (iii) protection; and
361 (iv) sharing;
362 (b) the adequacy of the entity's practices in each of the areas described in Subsection
363 (10)(a); and
364 (c) for each of the areas described in Subsection (10)(a) that require reform, provide
365 recommendations to the government entity for reform; and
366 (11) annually report, on or before October 1, to the Judiciary Interim Committee:
367 (a) the results of the reviews described in Subsection (8), if any reviews have been
368 completed;
369 (b) the information described in Subsection (10); and
370 (c) recommendations for legislation based on the guiding standards and minimum
371 standards described in Subsections (1) and (2).
372 Section 3. Section **67-3-13** is enacted to read:
373 **67-3-13. Personal Privacy Oversight Committee.**
374 (1) There is created within the Office of the State Auditor the Personal Privacy
375 Oversight Committee.
376 (2) (a) The committee shall be composed of the following members appointed by the
377 state auditor:
378 (i) two members with experience in internet technology services, one of whom shall, at

379 the time of appointment, provide internet technology services for a county or municipality;

380 (ii) two members with experience in cybersecurity;

381 (iii) two members representing private industry in technology;

382 (iv) two members representing law enforcement, one of whom shall, at the time of

383 appointment, serve in local law enforcement;

384 (v) two members with experience in data privacy law;

385 (vi) one member with experience in data privacy policy; and

386 (vii) one member with experience in civil liberties law or policy and with specific

387 experience in identifying whether the use of a technology or policy may result in disparate

388 impacts on different populations.

389 (b) The committee shall be composed of one member with experience in civil liberties

390 law who is appointed by the attorney general and, at the time of appointment, is an assistant

391 attorney general.

392 (3) (a) Except as provided in Subsection (3)(b), the auditor shall appoint a member for a

393 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 committee

405 finds necessary.

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

407 (7) A member may not receive compensation or benefits for the member's service but

408 may receive per diem and travel expenses incurred as a member of the committee at the rates

409 established by the Division of Finance under:

410 (a) Sections [63A-3-106](#) and [63A-3-107](#); and

411 (b) rules made by the Division of Finance in accordance with Sections [63A-3-106](#) and
412 [63A-3-107](#).

413 (8) A member shall refrain from participating in a review of:

414 (a) an entity of which the member is an employee; or

415 (b) a technology in which the member has a financial interest.

416 (9) The committee shall meet as required by the state privacy officer to accomplish the
417 duties described in Subsection (10).

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

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

423 (c) If the committee finds that a use of technology or a policy reviewed under Subsection
424 (10)(a) does meet the minimum acceptable standards of privacy protection, the committee shall
425 review the technology use or policy again two years following the date of the initial review to
426 determine if the use still meets acceptable privacy standards.